
(2000) 11 P&H CK 0065
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 11939 of 1999

Gurnam Singh

APPELLANT

Vs

Joint Registrar, Coop. Societies, Jalandhar

RESPONDENT

Date of Decision : 29-11-2000

Acts Referred:

Citation : (2000) 11 P&H CK 0065

Hon'ble Judges : Mehtab S. Gill, J

Bench : Single Bench

Advocate : Mr. Anupam Bhardwaj, for the Appellant; Mr. K.S. Sivia, Assistant Advocate General and Mr. M.S. Kang, for the Respondent

Judgement

Mehtab S. Gill, J.—The petitioner has prayed for issuance of a writ in the nature of certiorari for quashing of resolutions dated May 7, 1999 and May 25, 1999 (Annexures P-1 and P-2) respectively passed by respondent No. 2- Hari Singh, Supervisory Officer, the Ajnala Co-operative Marketing-cum-Processing Society, Ltd., Anjala, District Amritsar and further quashing of order dated July 12, 1999 (Annexure P-3) passed by respondent No. 1, Joint Registrar, Co-operative Societies, Jalandhar and further a writ in the nature of mandamus directing the respondents to hold Elections according to law.

2. The petitioner has averred that he is an Ex-President of the Anjala Co-operative Marketing-cum-processing Society Ltd., Anjala (hereinafter referred to as "the Society"), which is duly registered under the Punjab Co-operative Societies Act, 1961 (hereinafter referred to as "the Act"). The last elections of the Society were held on September 12, 1994, but the Managing Committee was removed on August 6, 1997 and an Administrator was appointed in the Society on January 21, 1998. He was appointed u/s 27 of the Act. u/s 26(1-D) of the Act, the total period of the Administrator shall not exceed six months in the case of a primary society, and one year in the case of a central society and an apex society. The tenure of the Administrator had expired and a Supervisory officer was appointed in the Society. Respondent No. 2 is working as a Supervisory

Officer. It has been further averred that as the elections of the Society were due, respondent No. 3 (Cooperation Minister) got a resolution passed from respondent No. 2 (Supervisory Officer) for enrolling 470 new members in the Society with the mala fide intention so that their own members could be elected again in the managing committee. It has been further averred that total number of the original members of the Society is 354, thus stating that more members were enrolled than what the Society has proposed in its original members. Resolutions dated May 7, 1999 and May 25, 1999 enrolling 470 new members in the Society have been annexed with the petition as Annexures P-1 and P-2. It has been further averred that the Supervisory Officer has got no authority to pass a resolution or to enrol new members in the Society as in the entire Act, there is no such provision for appointment of a Supervisory Officer. Respondent No. 1-Joint Registrar, Co-operative Societies, Jalandhar, without applying his judicious mind granted an approval of the enrolling of new members under the political pressure of respondent No. 3. The order dated July 12, 1999 approving the aforementioned resolutions is annexed with the petition as Annexure P-3. It has been further averred that it is very difficult to implead all 470 members as respondents and only four members are impleaded as respondent Nos. 5 to 8 in representative capacity out of the list of new members, who were enrolled in the Society vide the above resolutions.

3. Notice of motion was issued to the respondents. Respondent No. 1 (Joint Registrar, Co-operative Societies, Jalandhar), respondent No. 3 (Ranjit Singh Bharampura, Cooperation Minister, Punjab Civil Secretariat, Chandigarh), Respondent No. 2 (Hari Singh, Supervisory Officer, the Ajnala Co-operative, Marketing-cum-Processing Society, Ltd., Ajnala, District Amritsar) and respondent No. 4 (The Ajnala Co-operative, Marketing-cum-Processing Society, Ltd., Ajnala through its Secretary) filed their separate replies.

4. Respondent No. 1 has denied the allegations levelled against him, but he admitted this averment that the elections of the Society were held on September 12, 1994. It has been averred that an Administrator was appointed vide order dated January 21, 1998 (Annexure R-1/T) u/s 27(1)(a) of the Act. It has been further averred that the Administrator could be validly appointed u/s 27(1)(a) even beyond a period of one year as provided in Section 27(1)(a) of the Act. In the instructions issued by the Registrar, Co-operative Societies, Punjab, as contained in letter No.Credit/CA-5/32/1430 dated June 18, 1986, it has been mentioned that where the term of Administrator expired, then Supervisory Officer was required to be appointed in the Society for looking after day-to-day affairs of the Society till a new managing committee comes into being.

5. Respondent No. 3 has denied the allegation that he exercised any political pressure for the enrolment of these members".

6. Respondent Nos. 2 and 4 also denied the allegations of the petitioner, but while replying to para 4 of the writ petition, where it was alleged that the Supervisory Officer was appointed, respondent Nos. 2 and 4 scuttled the issue of

Supervisory Officer, but have only stated that the Administrator can be appointed.

7. I have heard arguments advanced by Mr. Anupam Bhardwaj, teamed counsel for the petitioner, Mr. M.S. Kang, learned counsel for the respondent Nos. 2 and 4 and Mr. K.S. Sivia, Assistant Advocate General, Punjab for respondent Nos. 1 and 3.

8. It is admitted case of the parties that last elections were held on September 12, 1994 and the term of the Society was for 5 years and the new elections were to be held by September 11, 1999. The Managing Committee was removed u/s 27 of the Act on August 6, 1997 and an Administrator was appointed on January 21, 1998.

9. While going through the petition and the written statements, it comes out that the Administrator could have carried out his work u/s 27(1)(a) of the Act for a period of one year, i.e. till January 21, 1999. Section 27(1)(a) of the Act deals with the issue that after the committee is removed, a Government servant can be appointed as an administrator to manage the affairs of the society for a period not exceeding one year as may be specified in the order. Further, Sections 27(5) of the Act reads as under:

"27(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."

It is clear from the above quoted. Section that the Administrator shall, before the expiry of his term of office arrange for the new elections as per the Act, rules and bye-laws framed. But in the case in hand, when the term of the Administrator came to an end, the authorities appointed Shri Hari Singh as a Supervisory Officer.

10. Learned counsel for the petitioner, in support of his contention has drawn my attention to a judgment of this Court rendered in Balwant Singh and others v. The Union Territory Administration and others 1994 P.L.J. 6, wherein a Division Bench of this Court has held that under the Punjab Co-operative Societies Act, Sections 26(1-D) and 27, the appointment of a Supervisor as a stop-gap arrangement for day-to-day functioning is alien to the concept and the domain of jurisdiction of Registrar, Co-operative Societies. The law only postulates that an administrator can be appointed in the absence of the Managing Committee and that too only to a maximum period of one year.

11. Learned counsel for the petitioner has also placed reliance on the authority cited in the case of Brij Kishore Arora v. The Administrator, U.T. Chandigarh and others 1994 P.L.J. 68 : 1994(2) SCT 34 (P&H)(DB), wherein a Division Bench of this Court has observed that u/s 29 of the Punjab Cooperative Societies Act, the very continuation of a Supervisory Officer is void and is contrary to the mandate of the Act. Any action taken by him cannot be validated.

12. Learned counsel for the petitioner, on the question of appointment of a

Supervisory Officer, has drawn my attention to an order passed by a Division Bench of this Court in Civil Writ Petition No. 6520 of 1994 on September 20, 1994 "Urban Cooperative Bank Limited, Nawanshahar, District Jalandhar v. The Additional Registrar (Credit) Cooperative Societies, Punjab and others", wherein it has been observed that there is no provision for appointment of a Supervisory Officer. This view has been expressed by their Lordships on an earlier order passed by this Court in Civil Writ Petition No. 10 of 1989 decided on November 26, 1993.

13. There is no denial that the number of original membership of the Society was 354. The Joint Registrar gave his approval to the enrolment of new members in the Society vide order dated July 12, 1999 (Annexure P-3).

14. Learned counsel appearing for respondent Nos. 2 and 4 has very fairly conceded that there is no provision in the Act for appointment of a Supervisory Officer. It was a mistake on the part of the authorities to have named a Supervisory Officer but should have named an Administrator. This contention of the learned counsel for the respondents can only be taken with a pinch of salt as the authorities were very much clear that they could not have appointed an Administrator for more than one year. Therefore, they appointed respondent No. 2 as a Supervisory Officer.

15. A lot of stress has been laid that only four persons (respondent Nos. 5 to 8) who were members of the Society, were made as party-respondents in the instant writ petition. Instead of only these four members being impleaded, all 470 members should have been impleaded as respondents. Faced with this situation, learned counsel for the petitioner has relied on a decision rendered in T. Ramegowda Vs. R. Krishnamurthy and others, , wherein their Lordships of the Apex Court have observed that the members who have been enrolled without any authority need not be heard. He has also placed reliance on the authority cited in the case of Jt. Registrar of Co-op. Societies Vs. T.A. Kuttappan and Others, , wherein the Apex Court has clearly laid down the law that the Administrator so appointed after supersession of a Committee, it will not be permissible for him to enrol new members in the Committee.

16. A Judicial notice was been taken of Circular No. Credit/CA-2/5CL dated August 7, 2000 wherein the Registrar had clearly stated that the Administrator shall have no power to enrol new members (share holders) in the society. For ready reference, the contents of the said circular are reproduced below:

"From

The Registrar, Coop. Societies, Punjab Chandigarh.

To

1. All Joint Registrars)

2. All Deputy Registrars Coop.Societies

3. All Asslt. Registrars) in the State of Punjab.

Sub : Administrator or Registrar have no power to enrols new share holders in the Coop. Societies Supreme Court.

Ref: This office letter No. E&T/CL-49/995 dated 30.12.1999.

Memo:

The Government of Punjab Department of Cooperation has desired to circulate instructions of the Hon''ble Supreme Court of India regarding enrolment of new share holders in the Cooperative Societies. Hon''ble Supreme Court has decided that Administrator or any representative of Registrar, Cooperative Societies appointed to manage the affairs of the Cooperative Society in the absence of elected Managing Committee shall have no powers to enrol new share holders in the Society.

As such it has been decided that Administrator appointed in any Cooperative Society to manage the affairs of the Society shall have no powers to enroll new share holders of the Society.

These instructions should be complied with strictly.

Sd/- Addl.Registrar (Credit) for Registrar, Coop. Societies, Punjab, Chandigarh."

From the authorities cited above, in the instant case, it is amply clear that neither did respondent No. 1 nor any authority have the power to appoint a Supervisory officer to manage the affairs of the Society and even though it be taken that it was a mistake on the part of the authorities that instead of a Supervisory Officer, they should have appointed an Administrator, the law laid down by the Apex Court in the authorities cited above and the circular, as reproduced above, the Administrator also did not have any power to enrol new member in the society.

17. People have a right to have their own elected body and own elected members to govern themselves. The authorities in this case seem to be usurping the powers as provided to the members of the society to administer their own affairs.

18. In view of the foregoing discussion, writ petition is allowed. Resolutions dated May 7, 1999 and May 25, 1999 (Annexure P-1 and P-2) passed by respondent No. 2 and the order dated July 12, 1999 (Annexure P-3) passed by respondent No. 1 are quashed. Respondent No. 1, i.e. Joint Registrar, Co-operative Societies, Jaiandhar, it directed to hold elections of the Ajnala Co-operative, Marketing-cum-Processing Society Ltd.. Ajnala, within one month from the date of receipt of a certified copy of this order.

19. Petition allowed.