
(1971) 09 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 978 of 1970

Harbhajan Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 09-09-1971

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Representation of the People Act, 1951 — Section 86(3)

Citation : AIR 1973 P&H 31 : (1974) 1 ILR (P&H) 320

Hon'ble Judges : A.D. Koshal, J

Bench : Single Bench

Judgement

1. This petition under Articles 226 and 227 of the Constitution of India seeks a writ of certiorari quashing the order dated the 13th of March, 1970 (Annexure "A" to the petition) of the Joint Registrar, Co-Operative Societies, Punjab (respondent No.3) and declaring that the election of Kulwant Singh (Respondent No. 4) to the Executive Committee of the Janta Co-Operative Sugar Mills Limited, Bhogpur (hereinafter referred to as the Mills) is null and void, and has arisen in these circumstances. The Mills is a co-operative Societies Act, 1961 (hereinafter called the Act) and the Punjab Co-operative Societies Rules, 1963 (hereinafter referred to as the Rules). The governing body of the mills which under its bye-laws is known as the Board of Directors, and is hereinafter referred to as the Board, was to be elected in the month of March, 1970, and according to the programmed drawn up by the "Manager" the last date for filling of nomination papers by candidates was the 6th of March, 1970. The scrutiny of nomination papers took place on the 7th of March, 1970, by when only three candidates, namely, the petitioner, Kulwant Singh respondent No. 4 and one Mast Ram were left in the field in so far as the election from one of the Zones, namely, Zone No. 4 was concerned.

The petitioner objected to the acceptance of the nomination papers of respondent No. 4 on the ground that the latter had already served on the Board for a period of more than six years and was, therefore, ineligible for election to

the Board according to the provisions of sub-section (2) of Section 26-B read with clause (b) of Section 2 of the Act. These provisions are to the following effect:

"2. In this Act, unless the context otherwise requires:--

* * * * * (b) "committee" means the governing body of a Co-operative society by whatever name called, to which the management of the affairs of the society is entrusted."

"26-B.

(2) No person shall be eligible for being elected to the committee of any co-operative society after he has served on the committee of that society, whether before or after or partly before and partly after the commencement of the Punjab Co-Operative Societies (Amendment) Act, 1969 for a continuous period of not less than six years, unless a period of not less than three years, has expired since he last so served.

Explanation:--For the purpose of computing the period of six years under Sub-section (2), if a person ceased to serve on the committee on account of resignation tendered by him he shall be deemed to have so served for the full term in which resignation was tendered."

Respondent No. 3 who was functioning as the Returning Officer, rejected the objection summarily on the same day and finally (after he had given a detailed hearing to the parties in pursuance of a direction issued by the Registrar, Co-Operative Societies, Punjab, respondent No. 2) on the 13th of March, 1970 and accepted the nomination papers of respondent No. 4 through the impugned order which is appended as Annexure "A" to the petition and which was based inter alia on the findings given below:

(a) Respondent No. 4 served on the Board for a continuous period of more than six years from 10-10-1960 to 11-7-1968 but in the following capacities:--

(i) Elected Director from 10-10-1960 to 13-6-1964.

(ii) co-opted Director from 14-6-1964 to 4-12-1966.

(iii) Nominated Director from 5-12-1966 to 11-7-1968.

(The correctness of this finding was accepted at the hearing before respondent No. 3 by learned counsel for Respondent No. 4)

(b) The provisions of Sub-section (2) of Section 26-B of the Act which was added to the Act by the Punjab Co-operative Societies (Amendment) Act, 1969 (hereinafter referred to as the amending Act) apply only to persons who were serving on the Board on the 10th of September, 1969, i.e., the date of commencement of the amending Act.

The election from Zone NO. 4 took place on the 14th of March, 1970, and

respondent No. 4 declared successful while the petitioner, who boycotted the election was defeated.

2. It is the case of the petitioner that the interpretation put by the respondent No.3 on the provision of sub-section (2) of Section 26-B of the Act is wholly misconceived and I am of the same view. That interpretation was arrived at by respondent No. 3 thus:

"I have carefully heard the agreements of both the parties and have come to the conclusion that the Punjab Co-operative Societies (Amendment) Act, 1969 has not retrospective effect. Therefore section 26-B(2) is applicable to the persons who were on the committee of a society on the day this amended Act came into force. I have considered the meanings of the words "whether before" occurring of Section 26-B(2). These words have a meaning which is quite distinct and different from giving retrospective effect. These apply to the persons who were on the committee on the day of the commencement of the amended Act for a period of not less than six years and do not apply to the persons who were not members on the committee at the time of commencement of the Act."

It is true that the sub-section has no retrospective effect but then all that it means is that the provisions thereof are to be operative only in the case of a person who seeks election to a committee on or after the 10th of September, 1969, i.e., the date on which the sub-section was enacted, so that they cannot be applied to a case in which the question of eligibility of a person arose before the said date. But in so far as the fulfilment of the conditions of ineligibility of a candidate is concerned it has nothing to do with the question of retrospectivity of the sub-section and such conditions must be taken to be those prescribed by it. They are-

(a) The candidate concerned has served on the committee in question (whether before or after or partly before and partly after the 10th of September, 1969) for a continuous period of not less than six years.

(b) A period of three years has not expired since he last so served.

According to the language of the section whenever a person seeks election to a committee on or after the 10th of September, 1969, he would be ineligible if he fulfils the above conditions neither of which lays down that he must be serving on the committee on that date before the conditions would come into play. For the proposition to the contrary propounded by learned counsel for the contesting respondents reliance was placed on the expression "has served" occurring in all sub-section. His contention was that the expression meant "has served and is still serving". This contention is based on the erroneous assumption that the expression is a present perfect continuous tense of the verb "to serve". The correct position is that the expression is the present perfect and not the present perfect continuous tense of the verb "to serve" and means that the act of serving has already been completed or it was done and may be (but not necessarily is) continuing. The present perfect continuous tense of the verb "to serve" would be

"has been serving" and that is not the expression which the legislature, has used (although even if such an expression had been employed by the legislature, it is difficult to see how it would make the section mean that the conditions of ineligibility must exist on the date of commencement of the amending Act.).

Reference may here be made to Mubarak Mazdoor Vs. K.K. Banerji, , in which the expression "who has been a Judge" occurring in the proviso to sub-section (3) of Section 86 of the Representation of the People Act, 1951 was in controversy. That proviso runs thus;

"Provided * * * that if the Election Commissioner considers it expedient so to do, it may appoint a person who has been a Judge of a High Court as the member of a Tribunal."

O. H. Mootham, C. J., and A. P. Srivastava, J., who decided the case held that under the proviso the Election Commission was empowered to appoint a person who had at one time held the office of a Judge of a High Court, it being immaterial that he was a retired Judge.

In so holding they observed:

"The petitioner's contention is that the proviso to Section 86(3) must be interpreted strictly according to the rules of grammar and that, when so interpreted, the words "has been" (in the phrase "has been a Judge") signify that the person eligible for appointment must not only have held, but be then holding, office as a Judge; and that accordingly a retired Judge is not eligible for appointment. This argument is based on the assumption that "has been" is a present perfect continuous tense. This assumption in our opinion is not correct. "Has been" when not followed by a participle is the present perfect tense of "to be" and accordingly indicates that the state of being has existed and may be (but not necessarily is) continuing. For example, the statement "A has been to Ceylon" indicates that A has visited Ceylon but is not there now; whereas the sentence "The baby has been ill and day" implies not only that the baby has been ill but is still ill.

On the other hand "Y has been a soldier" excludes neither the possibility that Y is still a soldier nor that he has ceased to be one. We are clearly of opinion that the phrase "a person who has been a Judge" means a person who has at some time, held office as a Judge, but that it does not necessarily mean that the person must be holding office as a Judge at the time of his appointment as a member of the tribunal."

On a parity of reasoning the expression "has served" occurring in sub-section (2) of Section 26-B of the Act must bear the interpretation which I have given to it above.

The matter may be looked upon from another angle. The words "whether before or after or partly before and partly after the commencement" occurring in the sub section would show that all persons who fall within any of the following three

categories would be ineligible for election to a committee of a co-operative society for a period of three years reckoned as mentioned in the sub-section:

(i) Persons who have served on the committee for a continuous period of six years before the 10th of September 1969, and, according to the interpretation put by me earlier on the expression "has served" whether or not they continued to so serve till date.

(ii) Persons who start serving on the committee at any time after the 10th of September, 1969, and complete a period of six years of continuous service.

(iii) Persons who started serving on the committee before the 10th of September, 1969, and whose continuous period of service of six years expired after the 10th of September, 1969.

Now if the interpretation put upon the sub-section by respondent No. 3 is adopted persons falling under category (ii) would certainly not become ineligible for an election to the committee and that is obviously an absurd result which renders the word "after" occurring in the sub-section for the second time, wholly redundant.

There is still another aspect of the matter which needs attention. Section 26-B has been brought on the statute book not as a temporary or self-exhausting measure but on a permanent basis. Were it otherwise the legislature would make it clear in unambiguous language that the section was to be for a limited period. However, the effect of the interpretation put upon sub-section (2) thereof by respondent No. 3 is to render the sub-section self repealing after the lapse of a few years when no person fulfilling the conditions of ineligibility as interpreted by respondent No. 3 would be left in the field. As I read the sub-section, it clearly makes out that it is intended to apply to all persons who seek election after the 10th of September, 1969. The object of the section is to end monopolistic tendencies in the matter of membership of committees and there is no reason why it should be interpreted to curb such tendencies only for a limited period.

In view of the above discussion the contention raised on behalf of the contesting respondents that the ineligibility covered by sub-section (2) of Section 26-B of the Act was not attracted in the case of respondent No. 4 for the reason that he was not serving on the Board on the 10th of September, 1969, must be repelled.

3. Some other contentions were also raised by learned counsel for the contesting respondents and the same may now be examined. The first was that "a continuous period of not less than six years" mentioned in sub-section (2) of Section 26-B of the Act must be a period during the whole of which the person concerned held the position of a member of the committee in question in his capacity as "elected member" and that if such a person was for a part of the period a nominated or co-opted member of the committee, such period could not be counted as part of the period of six years. The contention is wholly unwarranted in view of the language used in the sub-section, according to which

the sole criterion of ineligibility is service on the committee which means service as a member. The sub-section goes no further and does not state that in order to attract the ineligibility the service must be of a particular type, so that what is to be seen is the period of membership of the person and not the mode in which such membership came to be held. In this view of the matter the entire period for which respondent No.4 served as a Director on the Board would be counted towards the period of not less than six years without reference to the manner in which he became a member, i.e., whether by election, nomination or co-option.

4. The next contention raised by learned counsel for the contesting respondents was that the period from 11-10-1963 to 13-6-1964 could not be counted as part of the period of "not less than six year" mentioned in sub-section (2) inasmuch as in between those two dates his continuance as a member of the Board was illegal, it not having behind it the sanction of any provision of the Act or the Rules or the bye-laws governing the Mills. It is true that the term of office of respondent NO. 4 as an elected member of the Board was for three years and came to an end on the 9th of October, 1963, but then from that date onwards up to the 14th of June, 1964, he was allowed by the Board to continue to serve as a member and under bye-law 34 of the bye-laws of the Mills the Board was empowered to grant him the necessary permission. That bye-law runs thus:

"34. The elected directors shall retire in rotation. One-third of such Directors shall retire every year. For the first two years the retiring Directors shall be selected by lots. Retiring Directors shall be eligible for re-election. The Board of Directors may co-opt a member to fill a vacancy occurring during a year till the next General Meeting."

It was apparently under this bye-law that respondent No. 4 continued to serve on the Board not only for the period from the 11th of October, 1963, to the 14th of June, 1964, but also subsequently up to the 4th of December, 1966. In this contention resolution Exhibit R-1 dated the 14th of June, 1964, passed by the Board is significant. It states-

"The Board decided that the four outgoing directors Sarvshri Kulwant Singh, Rana Moti Singh, Shankar Singh and Ujagar Singh be retired but will continue attending meetings of the Board till the election of new directors. General Manager should take action for holding elections. The list of the new share holders should be also published. Deduction money shares should be distributed to old shareholders." The resolution clearly shows that the Board treated respondent No. 4 as a Director up to the date of the resolution and then gave him permission to continue to be a Director henceforth-a permission which remained effective till the 4th of December, 1966, as admitted on behalf of respondent No.4 during the proceedings held by the respondents NO. 3. The contentions under examination is thus found to be without force.

5. Another point raised on behalf of the contesting respondents was that the petition should be thrown out on the short ground that an alternative remedy

was open to the petitioner by way of arbitration proceedings u/s 55 of the Act. Normally the point would have found favour with me but I find that the palpably wrong interpretation placed by respondent No.3 on sub-section (2) of Section 26-B of the Act goes to the very root of the matter and the injustice done is so manifest that it is plainly discernible. Besides the alternative remedy does not appear to me to be equally effective in the circumstances of the case in as much as arbitration proceedings are likely to drag on for a considerable period of time and are also normally entrusted to officials of the Co-operative Department in which respondent No. 3 occupies a high position. In similar circumstances writs were issued in *Devi Ram v. State of Punjab* (1964)66 PLR 1185 and *Nathu Ram v. State of Punjab* (1965)67 PLR 672. I find, therefore, that the present is not a fit case in which the petition should be rejected for the reason that an alternative remedy is open to the petitioner.

6. The next argument put forward on behalf of the contesting respondents was that the Mills was a private body and that, therefore, no writ should be issued in relation to its affairs. This argument is also without substance inasmuch as the petition seeks a writ quashing the action taken by an officer of the Co-Operative Department of the Punjab Government in contravention of his statutory obligations, the enforcement of which cannot be said to lie outside the ambit of the writ jurisdiction of the High Court merely on account of the fact that the Mills in relation to the affairs of which all the question in controversy have arisen is a private body and not a statutory institution.

7. The next contention of learned counsel for the contesting respondents must also be turned down. It was that the Society not being a party to these proceedings, the petitioner was not entitled to a writ. No authority has been cited in support of it and it must be held to be without force inasmuch as no relief is sought against the Mills and although the petitioner seeks declaration about the election of respondent No. 4 being void on the ground that his nomination papers were accepted by respondent No. 3 in contravention of a provision of a statute, such a declaration can be given to him without the Mills being a party to the petition.

8. No other point was urged before me and, for the reasons stated, the petition succeeds and is accepted with costs. The impugned order is quashed and the election of respondent No.4 to the Board is declared null and void. Counsel's fee Rs. 200/-.

9. Petition allowed