

(2012) 08 P&H CK 0240
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 14561 of 2012

Hardev Singh Tiur

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 23-08-2012

Acts Referred:

Punjab Co-operative Societies Act, 1961 — Section 19, 19(2), 85(2)(xii)

Citation : (2012) 168 PLR 398

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Advocate : M.S. Kang, for the Appellant;

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—Respondent No. 4 contested the election of Board of Directors of Milk Union from Zone No. 8 as a representative of their respective Societies of the said Zone held in May, 2010. The petitioner challenged this election on the ground that respondent No. 4 was ineligible to contest the election as a Director of Milk Union. Respondent No. 4 in his defence pleaded that disqualification of a member society alone was required to be seen and not that of his or its representative. The election petition filed by the petitioner was accordingly dismissed on 31.8.2010 holding that ground of disqualification of the society represented by respondent No. 4 was to be seen and not the disqualification of respondent No. 4. While taking this view, the reliance is placed by the authorities on a Division Bench judgment of this Court in the case of Parminder Singh v. State of Punjab and others, AIR 2007 P & H 150. This was also an election pertaining to a Board of Directors of Milk Union. The petitioner then challenged this award by filing a civil writ petition before this Court in the year 2010. The petitioner, however, was relegated to his alternative remedy of filing appeal against the said order. The appeal filed by the petitioner was allowed by the Additional Registrar on 8.3.2011, but the said appellate order is again set aside by respondent No. 1 on a revision filed by respondent No. 4, the elected Director.

The case was remanded for fresh decision before the Appellate Authority. Thereafter, the Appellate Authority has dismissed the appeal on 25.4.2012. The revision filed by the petitioner is also dismissed on 24.5.2012 and the petitioner has impugned these orders before this court through the present writ petition.

2. The precise question, which has been raised by the petitioner, is whether the disqualification of the individual member contesting election of Board of Directors as a representative of the society comprising the Zone is to be seen or the disqualification of the society as such. This very question has been answered by a Division Bench of this court in a well considered judgment in the case of Parminder Singh (supra). Still, the petitioner would seek reconsideration or re-examination of the issue on the ground that the Division Bench did not take into consideration the rules contained in Appendix "C" In this regard, the counsel has referred to Rule 23, which provides "the members of the Managing Committee of a cooperative society shall be elected in accordance with rules given in Appendix "C". The grievance of the petitioner is that the authorities while rejecting the election petition have not considered the arguments raised on behalf of the petitioner relying on rules contained in Appendix "C" As per the counsel, this would be enough to render the impugned orders illegal.

3. Let us first consider the view expressed by the Division Bench of this Court in Parminder Singh's case (supra). While considering the issue before it, Division Bench has referred the provisions of S.19, S.85(2)(xii) of the Punjab Co-operative Societies Act (for short "the Act") and Rule 25 of Punjab Co-operative Societies Rules (for brevity "the Rules"). The Court has held that primary societies are the electoral college for election to the Boards of central societies, unless primary society has been disqualified for any reason, its representative who may be suffering from personal disqualification on any number of counts, cannot be debarred from representing the society. The court has specifically held that the personal disqualification of representative is thus irrelevant and cannot be taken into consideration. Incidentally, the present counsel representing the petitioner has pressed this line of submission before the Division Bench while representing the petitioner in this case. Petitioner Parminder Singh was said to be ineligible to contest election. The objection against the petitioner was that he was Member of Chalaki Society as well as Member of Bahibalpur Society. Petitioner, in fact, was President of Bhaibalpur Society, whereas the complainant in this case was President of Shantpur Society. The plea against Parminder Singh was that he could not be a member of two societies and since he was living outside the area of Bahibalpur Society, he was not eligible to become member of the society and so ineligible to contest election of Milk Union as representative of that Society. Reference is made to Bye-law 37(a) which lays down certain disqualifications. Even the vires of this Bye-law were questioned.

4. A reference was made to Full Bench decision in case titled Kulwant Singh v. State of Punjab, 1999 (2) PLJ 333 in support of the submissions made on behalf of Parminder Singh. The argument raised was that under the Rules, the only

provision which lays down disqualifications of a person seeking election as Director or member of a co-operative society are given under Rule 25. This Rule had been framed by the State Government under the rule making power given to it u/s 85(2)(xii). This section empowered the Government to make rules to prohibit a society from electing a defaulting member to its committee or to be its representative. The argument was that rule was framed under this provision for laying down disqualification for members seeking election. There were no corresponding rules laying down disqualification for a representative of a cooperative society. Such representatives are appointed u/s 19(2) of the Act. The cooperative society appoints one of its members to vote on its behalf in the affair of another co-operative society of which it is a member. Thus, primary society appoints one of its members to vote on its behalf in the affairs of the central society. Exactly is the situation in the present case. The Full Bench in the case of Kulwant Singh (supra) had viewed as under:--

But where a Co-operative Society is a member of another Co-operative Society, it is entitled to nominate one of its members to vote on its behalf and in the affairs of that society. The provision of Section 19(2) of the Act are indicative of the legislative intent not to restrict representation of a Primary Co-operative Society to a Central or its Managing Committee or office bearers thereof

AND

Legally unaltered membership of Primary Society of an individual is the very foundation of cause and consequences under these relevant laws, unless the Byelaws validly framed in consonance with the Act otherwise provide. The loss of the office in the managing Committee of a Primary Society per se will not become disqualification against the individual in relation to his status in the Managing Committee of a Central or Apex Body. It is cessation of basic membership which could result in inviting order under Rule 26(f) of the Rules in the facts and circumstances of the present case.

5. The facts in Kulwant Singh's case (supra) were that the petitioner therein was a member of a particular primary society and was elected as its President. He was also nominated by the Managing Committee to represent his society in the election for Director of the Central Society and was so elected. After election, the Board of Directors of the Central Society was suspended. This order was challenged and interim order was passed staying the suspension. Not content with this, the matter was pursued further and Kulwant Singh was suspended as the President of his Primary Society and, thus, having incurred disqualification he was sought to be removed as a Director of the Central Society. In this regard, the Full Bench held that where a member earns a disqualification in relation to its membership of primary society which he represents, he would not cease to be a Director of the Board of the Central Society, where he represents his primary society. The Full Bench has approved a similar view earlier expressed in the case of Thakur Janak Singh v. The State of Punjab, 1974 PLJ 119. In Ajaib Singh v. Krishan Saroop 1980 PLJ 275 (DB), the Division Bench has held that

disqualification of a society was to be considered and not of its individual representative. The principle laid down in Ajaib Singh's case (supra) was adopted in Kuldeep Singh v. State of Haryana, 1981 PLJ 398 (SB). So is the view expressed in Ranjit Singh v. Registrar 1986 PLJ 261 (DB). After discussing all these judgments, the Division Bench in Parminder Singh's case (supra) has finally culled out the ratio of law in the following manner:-

20. It needs to be emphasised that primary societies are the electoral college for election to the boards of central societies. Therefore, unless a primary society has been disqualified for any reason, its representative who may be suffering from personal disqualification on any number of counts cannot be debarred from representing the society. This is the continuous trend of judicial authority. Law has been clearly stated in Thakur Janak Singh, 1974 PLJ 119, Ajaib Singh, 1980 PLJ 275, Mohinderpal Singh Samundri Vs. The Registrar, Co-operative Societies, Punjab, Sector 17, Chandigarh, and others, Kuldeep Singh, 1981 PLJ 398, Ranjit Singh, 1986 PLJ 261 and in the Full Bench decision in Kulwant Singh, 1999 (2) PLJ 333.

21. The authorities under the Punjab Co-operative Societies Act, 1961 who passed orders Annexure P-1, P-2 and P-3 had clearly taken the wrong view of law by interpreting it against Parminder Singh, the individual. Therefore, we need not examine the vires of the impugned by-laws.

6. In view of large number of precedents, which were placed before the Division Bench by none other than the counsel for the petitioner, who was appearing for Parminder Singh in the above noted case, there is no occasion for reconsidering the issue.

7. The submission now made is that Rules contained in Appendix "C" which have not been kept in view by the courts in the earlier judgments. In this regard, reference is made to Rule 1(e), (f), (g) and 2 of Appendix "C" Part I, which has defined "Voter", "Representative" and "Candidate". Rule 2 in Appendix "C" lays down qualifications of candidates. The rules, referred to above, talk of electing Members of Managing Committee of a cooperative society and in that context words "Voter, Representative and Candidate" are defined. Voter means a person entitled to vote under these rules; Representative means an elector who is authorised to vote on behalf of a cooperative society in the affairs of another cooperative society; Candidate means a voter who files his nomination paper to seek election of a member of the committee of a cooperative society. Rule 2 then provides that no person shall be eligible for election as a member of committee if he is subject to any disqualification mentioned in the Act and the Rules. On this basis, it is urged that the persons entitled to vote in the case of election to a central cooperative society, is the representative of the member of primary cooperative society. It is urged that the voter is always an individual either as a member or representative and only a voter can be a candidate. The counsel accordingly pleads that qualifications of a candidate alone are required to be seen and the candidate is not a member of society but its representative, who is

an individual and is authorised to vote on behalf of the society.

8. The petition challenging the election as filed by the petitioner was dismissed by Joint Director on the ground that the facts in this case were almost similar to the case of Parminder Singh. The Additional Registrar further considered the issues raised by the petitioner on the basis of Appendix "C". He has observed that no objection was raised at the time of nomination. The Addl. Registrar then considered the pleas raised on behalf of the parties and has again viewed that the disqualification is to be seen of the society and not of the individual. The allegation against the respondent to say that he is disqualified is on the ground that he supplies milk to the society and, thus, is not eligible to be a member. It is pointed out that he was not supplying milk to public or private party and the society is supplying the milk to the Milk Union. The society being a member of the Milk Union was competent to seek election. It is in this context the disqualification of a society is required to be seen. If this plea of the petitioner is accepted, then even the society which is supplying milk to the Milk Union may also be held disqualified to participate in the election of Board of Directors.

9. Despite having to confront with number of precedents against him, the counsel still placed before me a Single Bench decision of this court in the case of Mohinderpal Samundri v. Registrar, Co-operative Societies, Punjab, Sector 17, Chandigarh and others, (1994-2) 107 PLR 641. The facts in this case are entirely different and otherwise also are not relevant in any manner to the controversy in the present case. The election of the elected candidate was sought to be challenged on the ground that he was a member of a society which was not affiliated to the Apex Society, but was a defaulter to a Bank. The society which the elected candidate represented was not a defaulter nor was the elected candidate suffering from any disqualification. This court took a view that mere fact that other society of which the elected candidate also happened to be a member, was defaulter of a Cooperative Bank would not lead to inference that elected candidate incurred disqualification of being a default either of the Society or the Bank. Apparently, Mr. Kang, the counsel for the petitioner, would seek support from the observations made in this case to urge that the elected candidate would have incurred disqualification of being a defaulter to the Society only if the society has raised a demand against him which the later would have failed to comply. From this, the counsel seems to urge that disqualification of the members would also be an issue. This, in my view, in this case was in view of Rule 25 of the Bye-laws of the Apex Society, which provided that a person seeking election as a representative of the Co-operative Society will not be eligible to seek such election if he in his individual capacity is a defaulter to the Apex Society and Society affiliated to the Apex Society. This is entirely different situation. Once a person is a defaulter of an Apex Society, the disqualification he incurs from being elected as a representative of the Cooperative Society to represent it in the Apex Society. That would be entirely a different situation which is not at all attracted, in the present case. The disqualification for membership of committee is contained in Rule 25 of the Rules. The word

"person" in this Rule has been held to include a registered cooperative society who would be a person in the contemplation of society. The use of words "he" and "him" would not imply that a natural human being is alone contemplation of these words and that these cannot apply to society who is also a person. (See Thakur Janak Singh case (supra). So, the definition of "voter" to mean a person as pressed by the counsel would equally apply to the society as such. The counsel would not be unaware of this position which he has not placed before this court and is, thus, seen, wanting in properly assisting the court. Accordingly, I find no merit in the plea raised by the counsel for the petitioner and would dismiss the petition in limine.