
(2013) 10 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 869 of 2013

H.C. Arora

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 31-10-2013

Acts Referred:

Citation : (2014) 1 SCT 804

Hon'ble Judges : Sanjay Kishan Kaul, C.J; Augustine George Masih, J

Bench : Division Bench

Judgement

Augustine George Masih, J.—This Public Interest Litigation has been preferred by an practicing Advocate of this Court, challenging appointment of Joginder Pal Singh, respondent No. 4, as Chairman, Punjab State Warehousing Corporation (hereinafter referred to as "the Corporation") on the ground that his appointment as a Chairman of the Corporation is not in consonance with the statutory rules as he has not been appointed as Director of the Corporation. It is asserted that unless a person is appointed and holding the post of Director, he cannot be appointed as a Chairman as provided in Section 20 of the Warehousing Corporation Act, 1962 (for short, "1962 Act"). Apart from this, it has been submitted that the said respondent is disqualified for appointment to the office of Director as per subsection (iii) of Section 21 of the 1962 Act, which holds that if a Director is or has been convicted of any offence, involving moral turpitude and sentenced in respect thereof to imprisonment, he will be disqualified for appointment to the post of Director. Respondent No. 4 has been convicted under Sections 419 and 471 of IPC and was released on probation. He is facing criminal case registered u/s 2(i), 3, 5, 8, 21 and 36 of the Punjab Apartment and Property Regulation Act, 1995 (for short, "1995 Act") for setting up an unauthorized colony, in which charges have been framed against him on 28.9.2010 in the Court of Additional Chief Judicial Magistrate, Faridkot and the trial is under progress, virtually stating that he is not fit for appointment to a public post. It is the contention of the petitioner that respondent No. 4 has been appointed by State of Punjab without taking into consideration the requirement

of the statute, which lays down the eligibility of a person for appointment to the post of a Director of the Corporation. The disqualification, as provided in Section 21 of the 1962 Act, for office of the Director of the Corporation has not been taken into consideration, especially sub-section (iii) of the said Section, which provides that a convicted person of any offence, involving moral turpitude, cannot be appointed.

2. His further contention is that the primary intention of the statute is that a person to be appointed as a Director must carry a good moral character and should not be involved in criminal case for offence(s), which involved moral turpitude. Respondent No. 4 stands convicted for an offence u/s 419 IPC (cheating by impersonation) and Section 471 IPC (using forged documents as genuine). Both these offences fall within the term "involving moral turpitude". Apart from this, the said respondent was involved in Case No. 444 of 2004, under Sections 132 and 135(i)(a) of the Customs Act, 1962, in which he was acquitted by the Additional Chief Metropolitan Magistrate (A.C.M.M.), Tees Hazari, New Delhi, against which appeal preferred by the Custom authorities is pending consideration before the Delhi High Court. In FIR No. 120 dated 26.8.2007, registered u/s 2(i), 3, 5, 8, 21 and 36 of 1995 Act, charges stand framed and the trial is pending. FIR No. 68 dated 26.5.2008, under Sections 307, 148, 149 IPC read with Section 27 of the Arms Act was registered at Police Station, Mehna, District Moga, against him, in which he was acquitted by the Additional Sessions Judge, Moga. On these basis, it has been asserted that the antecedents of respondent No. 4 would not entitle him to be considered and appointed as the Director of the Corporation.

3. It is alleged that the said respondent was elected as a Member of the Legislative Assembly against the Congress ticket. On 26.12.2012, a news report appeared in the Hindustan Times, wherein it was pointed out with regard to the cases in which the said respondent was involved and it was also mentioned that he is likely to change the party to get rid of criminal cases registered against him. Another report appeared in the Hindustan Times dated 27.12.2012, where it was reported that respondent No. 4 had joined the Shrimoni Akali Dal (SAD) after resigning from the Congress Party. On 28.12.2012, reports in various newspapers were published to the effect that Chief Minister of Punjab had cleared the file of respondent No. 4 for appointment as Chairman of the Corporation and he is likely to join the said post any time. The contention, thus, is that the appointment of Joginder Pal Jain, respondent No. 4, as Chairman is on extraneous consideration/grounds other than in public interest or in the interest of the Corporation, which is to be run on sound business principles. In the light of these facts, the petitioner sent a legal notice dated 28.12.2012 to respondent Nos. 1 and 2, highlight therein the criminal antecedents of respondent No. 4 and calling upon them not to appoint respondent No. 4 as the Chairman. However, a newspaper report appeared on 22.1.2013 that respondent No. 4 took over charge as Chairman of the Corporation on 1.1.2013. After downloading the affidavits furnished by respondent No. 4 before the Returning Officer for election

to the Punjab Legislative Assembly held in 2012, the details about the criminal cases in which respondent No. 4 was involved, came to the notice of the petitioner and thereafter, making further enquiry into the matter, filed the present writ petition on 15.1.2013, challenging the appointment of respondent No. 4 as Chairman of the Corporation.

4. Upon notice, reply has been filed by the Central Warehousing Corporation-respondent No. 3, wherein it has been asserted that initially, as per the unamended provisions of Section 20(2) of 1962 Act, for appointment to the post of Chairman of the Board of Directors by the State Government, prior consultation with the Central Warehousing Corporation was required. However, the said Section has been amended vide Warehousing Corporation (Amendment) Act, 2001, wherein the words "with the previous approval of" have been substituted by the words "under intimation to". The amended Section, therefore, does not mandate the requirement of prior consultation in the matter of appointment of the Chairman of the State Warehousing Corporation and it is the sole prerogative of the State Government to appoint a Chairman by taking a conscious decision. Thus, there being no role to be played by the Central Warehousing Corporation.

5. Respondent Nos. 1 and 2 have taken a similar stand with regard to the contention of the petitioner in his petition, asserting and emphasizing about the prior approval of the Central Warehousing Corporation as a requirement before appointment of a Chairman is to be made and has also relied upon the amended provision of Section 20(2) of the 1962 Act. It has been stated that as required, the intimation about appointment of respondent No. 4 as Chairman of the Corporation had been sent. It has been asserted that respondent No. 4 was firstly appointed as Director of the Board of Directors of the Corporation and only in pursuance thereto he was appointed as the Chairman of the Corporation.

6. Emphasis has been laid upon sub-section (iii) of Section 21, Which deals with disqualification for the office of the Director of the Corporation by assailing that a person would incur disqualification for appointment to the post of Director not only on the ground of conviction of any offence involving moral turpitude but should also be sentenced in respect thereof for imprisonment not less than six months. Even if such an order of imprisonment is passed and a period of five years has elapsed from the date of expiry of the sentence, the disqualification, if any, would cease to exist.

7. In the case of respondent No. 4, it has been asserted that Sections 419 and 471 IPC, for which he has been convicted, are not offences involving moral turpitude. He was merely convicted for these two offences but was never sentenced for an imprisonment of six months or more as he was released on probation on furnishing the probation bond together with one surety for a period of one year amounting to Rs. 5,000/- with a direction to keep peace and to be of good behavior and not to commit similar type of offence in future. He was also awarded to pay a sum of Rs. 3,000/- as costs. Qua the other allegations and the

cases referred to by the petitioner, it has been stated that in none of the cases, respondent No. 4 has been convicted, which would entail disqualification on him for being appointed as a Director.

8. Similar is the reply of respondent No. 4. He has highlighted that he had worked on various prestigious posts being nominated Chairman of the Improvement Trust, Moga, from 28.10.1994 to 5.4.2002 and thereafter he was elected as President of the Municipal Council, Moga, on 26.3.2003 and remained as such till 1.3.2007. He was elected as Member of the Legislative Assembly from Moga and completed his term of five years. He was again elected as Member of Legislative Assembly in March 2012 and thereafter he resigned as a Congress M.L.A. on joining Shrimoni Akali Dal (SAD) on 26.12.2012. In February 2013, he contested by elections from Moga constituency and has once again been elected as M.L.A. Assertion, thus, is that he is not disqualified for appointment as a Director as well as the Chairman of the Corporation.

9. The case was heard on 8.7.2013, when a direction was issued to respondent Nos. 1 and 2 to produce the complete records regarding the consideration of respondent No. 4 for the post of Chairman to verify whether the fact of order of conviction passed against him in the criminal case was examined while considering the suitability of respondent No. 4 to be appointed to the post. The case was thereafter taken up for hearing on 19.8.2013, when the learned Advocate General, Punjab, fairly stated that the said material was not before the concerned authorities while taking the call of making the appointment of respondent No. 4 as Chairman. An opportunity was, thus, given to the respondent authorities to give reconsideration of the matter, assuming as if the material was with them when the appointment of respondent No. 4 had not taken place.

10. In compliance with the order passed on 19.8.2013, the learned Advocate General, Punjab, placed before this Court on 16.9.2013 an order passed on 13.9.2013 by the Financial Commissioner, Development, Punjab. On considering the matter, the following order was passed:-

Learned Advocate General has placed before us an order passed on 13.09.2013 by the Financial Commissioner, Development, Punjab, in terms thereof, despite the material brought on record of the conviction and probation granted to respondent No. 4 as well as in other case pending in which charges have been framed, the said respondent has been found indispensable for the job in question.

The petitioner, while canvassing his case, has further sought to contend that the requirement for election as Chairman of the Warehousing Corporation has a prerequisite requirement that the person has to be first a member of the Board, a legal position which is undisputed. It is the say of the petitioner, based on certain RTI information, that respondent No. 4 straightway was appointed as a Chairman and it is, thus, his contention, inter-alia, that such an appointment is not in accordance with law.

On the other hand, learned Advocate General, by making reference to the notification dated 27.12.2012, submits that it contains two parts-initial appointment as a Director and thereafter appointment as a Chairman. On perusal of records, he concedes that at the initial stage of the noting, prior to issuance of notification, it may not have happened in that sequence.

We would like to peruse the record ourselves and direct the records to be submitted in Court today duly flagged.

List on 23.09.2013.

On 23.9.2013, further submissions made by the learned counsel for the parties were heard and the judgment reserved, retaining the records till the judgment is pronounced.

11. We have considered the submissions made by the petitioner and counsel for the respondents and have gone through the records.

12. The assertion of the petitioner that the requirement of the previous approval of the Central Warehousing Corporation for appointment of the Chairman of the Board of Directors of the Corporation by the State Government from amongst the Directors of the Corporation has been found to be without any basis in the light of the amendment of Section 20(2) of the 1962 Act, which, after amendment reads as follows:-

The Chairman of the board of directors shall be appointed by the State Government from among the directors of the State Warehousing Corporation under intimation to the Central Warehousing Corporation.

As per this amended Section, only an intimation to the Central Warehousing Corporation is required with the substitution of the words "with the previous approval" by the words "under intimation to".

13. However, petitioner's contention that appointment of respondent No. 4 is not in consonance with Section 20 of 1962 Act carries weight. Section 20 of 1962 Act as amended reads as follow:-

20. Management of a State Warehousing Corporation.- (1) The general superintendence and management of the affairs of a State Warehousing Corporation shall vest in a board of directors which shall consist of the following, namely:-

(a) Five directors nominated by the Central Warehousing Corporation, of whom one shall be nominated in consultation with the State Bank and one at least shall be a non-official;

(b) Five-directors nominated by the State Government; and

(c) A managing director, appointed by the State Government in consultation with the directors referred to in clauses (a) and (b) and under intimation of the Central Warehousing Corporation.

(2) The Chairman of the board of directors shall be appointed by the State Government from among the directors of the State Warehousing Corporation under intimation of the Central Warehousing Corporation.

(3) The managing director shall-

(a) exercise such power and perform such duties as the board of directors of the State Warehousing Corporation may entrust or delegate to him, and

(b) receive such salary and allowances as the State Warehousing Corporation may, in consultation with the Central Warehousing Corporation, and with the previous approval of the State Government, fix.

(4) The board of directors shall act on business principle having regard to public interest and shall be guided by such instructions on questions of policy as may be given to them by the State Government of the Central Warehousing Corporation.

(5) If any doubt arises as to whether a question is or is not a question of policy, or, if the State Government and Central Warehousing Corporation give conflicting instructions, the matter shall be referred to the Central Government whose decision thereon shall be final.

(6) The directors of a State Warehousing Corporation, other than the managing director, shall be entitled to receive by way of remuneration such sums as may be prescribed:

Provided that no official director shall be entitled to receive any remuneration other than any allowance admissible to him under the rules regulating his conditions of service.

(7) The term of office of, and the manner of filling casual vacancies among, directors shall be such as may be prescribed.

As far as the controversy involved in the present case is concerned, sub-section (2) of Section 20 of 1962 Act would be relevant, which deals with appointment of Chairman of the Board of Directors.

14. A perusal of the above sub-section (2) would show that the Chairman can only be appointed from amongst the Directors of the State Warehousing Corporation. Thus, pre-requisite for a person to be considered for appointment to the post of Chairman is that he should be a Director of the State Warehousing Corporation, of which he is sought to be appointed as a Chairman. In other words, a person who is not appointed and holding the office as a Director of a State Warehousing Corporation, cannot be appointed as the Chairman of the Board of Directors.

15. A perusal of the records would show that respondent No. 4, Joginder Pal Jain, was appointed as Chairman of the Corporation by the Chief Minister of Punjab vide order dated 27.12.2012, passed in the office of Chief Minister, Punjab (Camp

New Delhi). It was further ordered that formal orders in this regard be issued immediately. The original order is not on records. However, a photocopy of this order is available at noting page 53 of the file. At noting page 54, subject mentioned is regarding appointment of Chairman, Punjab State Warehousing Corporation. Reference has been made to the orders of the Chief Minister at nothing page 53 and the proposal/draft for appointment of Joginder Pal Jain, resident of Moga, as Chairman of the Corporation, has been submitted. The said proposal has been approved by the Secretary, Financial Commissioner, Development and thereafter it is noted that orders be issued immediately. The same is marked to the Despatcher and has been issued at Pages 134-135 of the enclosed file. This exercise is completed on 27.12.2012 itself.

The order, which is in the form of a notification issued on 27.12.2012, read as follows:-

Government of Punjab Department of Agriculture (AGRICULTURE-II BRANCH)

Notification

No. 19/95/2003-Agr.II(9) 15993 The 27th December, 2012 In exercise of the powers conferred u/s 20(1)(b) of the Warehousing Corporation Act, 1962 (Central Act of 1962) and all other powers enabling him in this behalf, the Governor of Punjab is pleased to appoint Shri Joginder Pal Jain resident of Moga, as director on the Board of Directors of the Punjab State Warehousing Corporation with immediate effect.

The Governor of Punjab is pleased to appoint Shri Joginder Pal Jain resident of Moga, as Chairman of the said Corporation u/s 20(2) of the Warehousing Corporation Act, 1962 (Central Act of 1962) with immediate effect.

3. The terms and conditions of appointment of Shri Joginder Pal Jain resident of Moga will be issued separately.

Chandigarh Dated

G.S. Sandhu

27.12.12

Financial Commissioner Development Secretary to Govt. of Punjab Department of Agriculture

Endst. No. 19/95/2003-Agr.11(9) 15994 Chandigarh dated 27.12.12

A copy is forwarded to the Managing Director, Central Warehousing Corporation 4/1 Siri Institutional Area, (Opposite Siri Fort) Hauz Khas, New Delhi for information and necessary action.

Sd/- Under Secretary Agriculture

Endst. No. 19/95/2003-Agr.11(9) 15995 Chandigarh dated 27.12.12

A copy is forwarded to the Managing Director, Punjab State Warehousing Corporation Ltd. Chandigarh for information and necessary action.

Sd/- Under Secretary Agriculture

Endst. No. 19/95/2003-Agr.11(9) 15996 Chandigarh dated 27.12.12

A copy is forwarded to Shri Joginder Pal Jain, resident of Moga, for information and necessary action.

Sd/- Under Secretary Agriculture

A perusal of the above would show that the said order has been issued, appointing respondent No. 4 as Director of the Board of Directors of the Corporation with immediate effect. Para 2 is with regard to the appointment as Chairman of the said Corporation with immediate effect.

16. The noting file does not in any manner indicate that the name of respondent No. 4 was ever considered for appointment as Director of the Corporation, what to say of an order appointing him as such. Thus, his appointment as Director of the Board of Directors of the Corporation vide order dated 27.12.2012 is not supported by the records and is without any decision/order by the competent authority. It being not in accordance with law, thus, stands quashed.

17. It may be stated here that the only order passed on the records is appointing respondent No. 4 as the Chairman of the Corporation by the competent authority i.e. the Chief Minister, Punjab, dated 27.12.2012 (available on noting page 53 of the file in Punjabi), which when translated reads as follows:-

0172-2740190 (Attention of G.S. Sandhu, IAS, F.C.D.

Office of Chief Minister Punjab

(Camp: New Delhi)

Shri Joginder Pal Jain, resident of Moga, is appointed as Chairman of Punjab Warehousing Corporation.

Formal order in this regard be issued immediately.

Sd/- Parkash Singh Badal Chief Minister 27.12.12

18. This leaves no manner of doubt that respondent No. 4 has only been appointed as the Chairman of the Board of Directors of the Corporation and never as a Director of the Corporation. Further, there is subsequently also no consideration/discussion in the notings about appointing respondent No. 4 as a Director nor any ratification by the competent authority even after issuance of order dated 27.12.2012 (which also is an issue open whether such a recourse could be resorted to). If that be so, the appointment of respondent No. 4 as Chairman of the Board of Directors is not in consonance with Section 20(2) of the 1962 Act, which requires and mandates as an essential qualification that the

Chairman of the Board of Directors shall be appointed by the State Government from amongst the Directors of the State Warehousing Corporation. The order dated 27.12.2012 issued by the State of Punjab, appointing respondent No. 4 as the Chairman of the Corporation, thus, cannot sustain and is hereby quashed, being in violation of the statute.

19. Further, it has been pleaded that respondent No. 4 was elected as a Member of the Legislative Assembly on a Congress ticket. While he was continuing as a Member of the Legislative Assembly, a case FIR No. 20 dated 26.8.2007, under the 1995 Act was registered against him, in which the trial is in progress and the charges have been framed. In the elections, which were held in March 2012, he was again elected on a Congress ticket but he resigned on 26.12.2012 on joining Shrimoni Akali Dal. The date of resignation from the Congress party is 26.12.2012 and on 27.12.2012, he has been straightway appointed as Chairman of the Corporation by the Chief Minister of Punjab at Camp Office, Delhi. As a matter of fact, the processing of the file took place the same day and even the notification, appointing him as the Director and Chairman of the Corporation, was issued on the same day i.e. 27.12.2012. It, thus, cannot be said that the assertion of the petitioner that appointment of respondent No. 4 is not based on public interest but is for extraneous considerations is without any basis. The haste with which his appointment has been processed, while totally neglecting and overlooking the provisions of the statute further cements the assertion of the petitioner that appointment of respondent No. 4 is based upon considerations other than bona fide and not in the interest of Corporation. Further, on 19.8.2013 when the case was taken up for hearing, learned Advocate General, Punjab, admitted that the past criminal record and the pending cases against respondent No. 4 were not taken into consideration to assess the suitability and eligibility of respondent No. 4 for appointment to the office of Chairman of the Corporation. All this adds up and leads us to a conclusion that appointment of respondent No. 4 cannot be said to be justified in any manner.

20. Although the petitioner has asserted that respondent No. 4 is disqualified for holding the office of the Director of the Corporation and a response thereto has been filed by the respondents contradicting the same, but in the light of the above, when we have held that the appointment of respondent No. 4 as Chairman of the Corporation is not in consonance with law, we do not intend to delve further into this aspect and leave it open for consideration and do not express any opinion thereon. The writ petition stands allowed. Impugned order dated 27.12.2012, appointing Shri Joginder Pal Jain as Director and as Chairman of the Corporation stands quashed.