
(2005) 07 P&H CK 0058

In the Punjab And Haryana At Chandigarh

Case No : Amended Civil Writ Petition No. 19402 of 2003

Jagdish Singh Walia

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 04-07-2005

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226

Citation : (2005) 141 PLR 610 : (2005) 3 RCR(Civil) 665

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : M.S. Kang, for the Appellant; Swati Gupta, Assistant A.G. and D.V. Sharma, for the Respondent

Judgement

M.M. Kumar, J.—This petition filed under Article 226 prays for issuance of a writ in the nature of certiorari by quashing resolution dated 12.12.2003 passed by the Punjab State Co-operative Supply & Marketing Federation Limited (for brevity, "Markfed"), inter alia, authorising Chairman of Markfed either to represent himself or to nominate the Managing Director, Markfed or any other Director on any of the State/National level institutions. In this regard, agenda item No. 3 in the meeting held on 12.12.2003 has been approved. The principal ground for challenging the resolution dated 12.12.2003 is that the petitioner, who was earlier Chairman of Markfed, was authorised to represent Markfed for his whole tenure of five years and it was not confined to just one meeting of the State National level institutions. In that regard, primary reliance has been placed on Bye-law 23(g)(as amended in pursuance to power conferred by Section 10-A of the Punjab Co-operative Societies Act, 1961) (for brevity, "the Act"). Another ground of challenge is that no notice of the meeting along with agenda was issued which has resulted into violation of Rule 80 of the Punjab Co-operative Societies Rules, 1963 (for brevity, "the Rules").

2. Brief facts of the case are that the petitioner was elected as a Director in the Board of Directors in January/February 2001 and thereafter he was elected as

Chairman of the Board of Directors unanimously vide resolution dated 2.3.2001, the petitioner was also nominated to represent Markfed on General Council of National Co-operative Development Corporation, New Delhi (for brevity, "NCDC"), Indian Farmers Fertilizer Cooperative Limited (for brevity, "IFFCO"), Krishak Bharati Co-operative Limited (for brevity, "Kribhco"), National Agricultural Co-operative Marketing Federation of India Limited (for brevity, "NAFED"), Warehousing Corporation, New Delhi, National Co-operative Union of India and Indian Potash Limited, Chennai (for brevity, "IPL"). However, on 22.8.2003, respondent-State passed a composite order nominating Shri Harminder Singh Jassi-respondent No. 4 as a member of the Board of directors and also appointed him as Chairman of Markfed in exercise of powers u/s 26(2) (a) of the Act. The composite order dated 22.8.2003 was challenged by the petitioner in C.W.P. No. 13316 of 2003, titled as Jagdish Singh Walia and Ors. v. State of Punjab and Ors., which was dismissed by a Division Bench on 25.5.2004. In the instant petition, however, the challenge is confined to resolution (Annexure P-3) dated 12.12.2003 authorising respondent No. 4 to represent Markfed on the State/National level institutions or to nominate Managing Director or any other Director for the aforesaid purpose. According to the averments made by the petitioner, the management of Markfed is vested in its Board of Directors which consists of 12 Directors, who are representatives of the member societies. Three Directors are nominated by the Government. One Director is nominated by the Apex Co-operative Wing. Then it has a Managing Director alongwith Registrar, Co-operative Societies or his nominee. It is claimed that the election was held in January/February 2001 and all the elected Directors belonged to the Akali party, who have unanimously elected the petitioner as Chairman, Markfed, vide resolution dated 2.3.2001.

3. The petitioner has alleged that in the first meeting of the Board of Directors held on 18.9.2003 under the Chairmanship of respondent No. 4, an agenda item was brought regarding the nomination of Markfed on National/State level institutions. The meeting was re-convened and agenda was issued for 12.12.2003. It has been alleged that the agenda was neither sent nor served on the petitioner and he came to know about the meeting/agenda item only two days before the stipulated date. After obtaining copy of agenda item, he filed a writ petition on 11.12.2003 but the writ petition could only be heard on 16.12.2003 but by that time resolution (Annexure P-3) had already been passed. As a consequence, an application for amendment of the petition was filed, which was allowed. It is alleged that when the petitioner had gone to participate in the meeting on 12.12.2003 alongwith seven elected directors and attempted to enter the hall to oppose the resolution, the resolution had already been passed which has flagrantly violated Rule 80 of the Rules.

4. It has also been averred that a Director nominated under Bye-law 23(g) as amended u/s 10-A of the Act is to represent Markfed in the General Body/Special General Body/Board of Directors of National/State level institutions and he is not to hold his office during the pleasure of Markfed/Board of Directors but

he has to continue as long as the Board of Directors is to continue. It is also claimed by citing the judgment of the Supreme Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , that the principles of natural justice were also required to be followed before withdrawing the authorisation given to the petitioner on 19.3.2001 to represent Markfed on various National/State level institutions.

5. Respondent No. 3 Markfed had taken the stand that there is an alternative efficacious remedy available to the petitioner under Rule 80(i-a) of the Rules inasmuch as he could approach the Registrar by seeking a declaration to the effect that the proceeding of the meeting held by "Markfed" be declared as illegal and invalid by setting up various grounds. On merits, the stand taken is that although the petitioner was elected as Chairman unanimously in the meeting of the Board of Directors held on 2.3.2001, yet respondent No. 4 was elected as Chairman on 22.8.2003. It is claimed that when the petitioner has succeeded, Shri A.S. Sawra who had also been nominated to represent Markfed on the National/State level institutions, the Board of Directors in its meeting held on 28.5.1999 had nominated the petitioner to represent Markfed on various State/National level institutions. A reference has been made to the amendment made in 2002 in the Multi State Co-operative Societies Act, 1984 (for brevity, "1984 Act"). It has also been submitted that there is no fixed tenure contemplated under Bye-law 23(g) and any nomination made in favour of a Director can be reconsidered and reviewed especially with the change in the constitution of Board of Directors. Pointing out the discrepancies (which is typographical error) that no meeting was held on 16.12.2003, it has been submitted that the meeting was held only on 12.12.2003.

6. In the written statement filed by respondent No. 4 another objection raised is that Markfed is not amenable to writ jurisdiction of this Court because it is not an authority or agency of the State within the meaning of Article 12 of the Constitution and, as such, no writ is competent against it. It has further been submitted that the question of nomination is to be considered in accordance with bye-laws of various National/State level institutions and accordingly any change in the nomination is required to be intimated by communicating fresh resolution of the Board of directors. It has further been submitted that the authorisation with regard to State level institutions for representing Markfed has to be made in accordance with the provisions of 1961 Act and in case of National institutions, nomination has to be made in accordance with the provisions of 1984 Act, as amended in 2002. The plea of the petitioners that they were prevented from participating in the meeting held on 12.12.2003 has been controverted by claiming that proper notice was issued to the petitioner in the same manner and on the same address i.e. Gurdaspur Central Co-operative Bank Limited Branch, Batala, as was done earlier. It is pertinent to mention that the petitioner has been the chairman of that Bank. According to the respondent No. 4, once the petitioner had come to know about the holding of the meeting and he made an attempt to participate, then no grievance could be made that no notice of the

meeting was issued.

7. Shri M.S. Kang, learned Counsel for the petitioner has argued that unamended Bye-law 23(i) contemplated that the Board of Directors was authorised to appoint a Director to represent Markfed at the National/State level societies for one meeting only. He has further submitted that the aforementioned Bye-law 23(g) was amended by invoking power vested u/s 10-A of the Act and authorisation has been made not only for a meeting but for the whole tenure coinciding with the tenure of the Board of Directors. Therefore, nomination of the petitioner cannot be confined to one meeting but it is for the whole term of the Board of Directors. Mr. Kang has further submitted that before withdrawing the powers conferred on the petitioner by nominating him to represent Markfed on various National/State level institutions by Annexure P-2 the minimum requirement of issuance of notice was mandatory and an opportunity of hearing should have been granted. In Support of his submission, learned Counsel has placed reliance on a judgment of the Supreme Court in the case of Ramana Daya Ram Shetty (supra) and no another judgment in the case of B.S. Minhas Vs. Indian Statistical Institute and Others, .

8. Learned counsel has then argued that neither any notice of the meeting held on 12.12.2003 was served nor issued with any agenda to the petitioner which flagrantly violated mandatory provisions of Rule 80 of the Rules. He has maintained that Rule 80 imposes an obligation on respondent-Markfed to serve at least 15 days clear notice specifying the date, place, time and agenda for holding the meeting of the Board. No notice of the meeting having been issued, the resolution dated 12.12.2003 is liable to be quashed. Learned counsel has referred to the allegations that the petitioner alongwith seven other Directors was not permitted to enter the meeting hall and the resolution was passed hurriedly in order to defeat participation of the petitioner and his seven colleagues.

9. Ms. Swati Gupta, learned State counsel and Mr. D.V. Sharma, learned Counsel for respondent Nos. 3 and 4 have argued that Markfed is a member of the National Level Apex Co-operative Institute, which is registered under 1984 Act (as amended in 2002). According to Section 29(3) of 1984 Act, Markfed could be represented at the National Level Co-operative institutions only through the Chairman or Chief Executive and not through a Director. The petitioner was authorised to represent the Markfed vide resolution dated 19.3.2001 (Annexure P-2) in his capacity as Chairman at various National level Co-operative Institutions of which Markfed is a member. It has further been argued that in terms of Bye-law. 23(i) a Director could not be nominated to represent Markfed at the National Level Institutions in view of Section 29(3) of 1984 Act, as he was no longer acting as Chairman. Learned counsel has pointed out that the Division Bench in Jagdish Singh Walia's case (supra) has already upheld the appointment of respondent No. 4 as Chairman. It is claimed that any conflict between the bye-laws or the Act has to be resolved by ignoring the bye-laws. It has further been

submitted that 1984 Act has been repealed by the Multi State Co-operative Societies, Act, 2002, which has been enforced w.e.f. 19.8.2002. Section 38(3) of the 1984 Act (as amended in 2002) provides that even a Director could represent the Markfed. It is claimed that there is no illegality in the resolution dated 12.12.2003 (Annexure P-3).

10. Learned counsel has argued that the bye-laws lack statutory force and, therefore, are not enforceable in the Court of law. In support of their submission, learned Counsel has placed reliance on a judgment of the Supreme Court in the case of Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, and a Division Bench judgment of this Court in the case of Joginder Singh v. State of Punjab 1977 P.L.J. 310. They have further submitted that the power to nominate which flows from the bye-law would necessarily imply and include the power to remove. In this regard they have placed reliance on a judgment of the Supreme Court in the case of Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others, .

11. Learned counsel have then made reference to para 12 of the amended writ petition, wherein, the petitioner has averred about his attempt to participate in meeting held on 12.12.2003 alongwith seven Directors and the allegation that he was not allowed to enter the meeting hall, whereas in para 15(iii), the petitioner has stated that he went at 12.30 p.m. alongwith eight Directors. On the basis of the aforementioned contradiction, learned Counsel have argued that the falsity of the stand taken by the petitioner is completely exposed as no attempt has been made either to clarify the factual position by replication nor has any correction been sought. Learned counsel have argued that Markfed has passed the resolution after waiting for the petitioner for about 15 minutes i.e. at about 12.45 p.m. According to learned Counsel the writ petition involves disputed questions of facts and, therefore, this Court should not permit invocation of writ jurisdiction for the aforementioned purposes, Concluding his arguments, Mr. D.V. Sharma, learned Counsel for respondents 3 and 4 has submitted that despite the decision of Full Bench of five judges in Chaman Lal Gupta v. Markfed, R.S.A. No. 2745 of 1985, decided on 3.11.2004, to the effect that Markfed is amenable to writ jurisdiction, the instant petition is neither competent nor it is maintainable against Markfed. In support of his submission, learned Counsel has placed reliance on a judgment of the Supreme Court in the case of General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrugan Nishad and Others, .

12. I have pondered over the respective submissions made by learned Counsel for the parties, perused the original record and with the able assistance of learned Counsel, I have gone through the pleadings. The following issues would arise for determination :

A) Whether the amendment made in Bye - law 23(g) would result in authorisation and appointment of a Director for his whole tenure to represent Markfed in the meetings of other co-operative societies and institutions or the tenure of a Director could be cashiered by passing a resolution by Markfed?

B) Whether the petitioner was served with notice alongwith agenda for the meeting of the Board of Directors, which was held on 12.12.2003, as required by Rule 80 of the Rules?

C) Whether any opportunity of hearing was required to be afforded to the petitioner before withdrawing his authorisation and appointment made vide resolution dated 19.3.2001 to represent Markfed in the meetings of the other co-operative societies?

RE: Question "A"

The power to represent Markfed in the meetings of other co-operative societies and institutions is regulated by Bye - law 23. Before 1995, Bye - law 23(i) was differently worded and an amendment was carried in the aforementioned bye-law by exercising power u/s 10-A of the Act by the Registrar. Bye-law 23(i) has been re-numbered after amendment and is now styled as Bye - law 23(g). Both the bye-laws before and after the amendment are juxtaposed below for the purposes of comparison :

-----				Before
amendment	in	1995	After	amendment
----- 23. Power and				
Duties of the Board 23. Powers and Duties of the Board of Directors - of Directors				
- (i) to appoint a director to represent the (g) to appoint and authorise a				
Federation in the meeting of the Managing Director to represent the Committee				
or General Body to another Federation in the Managing Co-operative Institutions				
and also to Committee or another Co-operative purchase sharers of other Co-				
operative Institutions. institutions and to invest the surplus funds of the				
Federation according to the Act and Rules laid thereunder.				

A reading of the bye-law before amendment would show that the Board of Directors has been vested with the powers to appoint one of the Directors to represent Markfed in the meeting of another Co-operative society or institution. Similarly, a perusal of Bye-law 23(g) as it stands after amendment, shows that the Board of Directors has been empowered to appoint a Director to represent Markfed in the meetings of another co-operative society or institution. However, there is important deletion in Bye-law 23(g) because of Board of Directors has been divested of its earlier power to appoint and authorise a Director to purchase sharers of other Co-operative institutions and to invest the surplus funds of Markfed in accordance with the provisions of the Act and the Rules. A plain reading of both the bye-laws before and after amendment does not suggest that a Director is to be appointed and authorised to represent Markfed in the meetings of other co-operative societies and institutions for his whole tenure of five years. By applying principles concerning interpretation of statute, such an intention could not be implied by comparing the two bye-laws before and after amendment. The amendment appears to have been made to achieve only one

object, namely, divesting the Board of Directors of its earlier power to authorise a Director to purchase shares of other co-operative institutions and to invest the surplus funds of Markfed in accordance with the provisions of the Act and the Rules.

14. I am further of the view that the bye-laws are framed to govern the internal management and smooth functioning of a co-operative society. In their substance, content and source of power, such bye-laws do not require any statutory character. In this regard, reliance has been rightly placed by Mr. D.V. Sharma, learned Counsel for respondent Nos. 3 and 4, on a judgment of the Supreme Court in the case of Co-operative Central Bank Limited (*supra*). It would be profitable to make a reference to the observations made in para 10 by their Lordships, which read as under:

"We are unable to accept the submission that the bye-laws of a co-operative society framed in pursuance of the provisions of the Act can be held to be law or to have the force of law. It has no doubt been held that, if a statute gives power to the Government or other authority to make rules, the rules so framed have the force of statute and are to be deemed to be incorporated as a part of the statute. That principle, however, does not apply to by-laws of the nature that a co-operative society is empowered by the Act to make. The bye-laws that are contemplated by the Act can be merely those which govern the internal management, business or administration of a society. They may be binding between the persons affected by them, but they do not have the force of a statute. In respect of bye-laws laying down conditions of services of the employees of a society, the bye-laws would be binding between the society and the employees just in the same manner as conditions of service laid down by contract between the parties. In fact, after such bye-laws laying down the conditions of service are made and any person enters the employment of a society those conditions of service will have to be treated as conditions accepted by the employee when entering the service and will thus bind him like conditions of service specifically forming part of the contract of service. They bye-laws that can be framed by a society under the Act are similar in nature to the Articles of Association of a Company incorporated under the Companies Act and such Articles of Association have never been held to have the force of law. In a number of cases, conditions of service for industries are laid down by Standing Orders certified under the Industrial Employment (Standing Orders) Act, 1946, and it has been held that, though such Standing Orders are binding between the employers and the employees of the industry governed by these Standing Orders they do not have any such force of law as to be binding on Industrial Tribunal adjudicating an industrial dispute.

The afore-mentioned view taken by the Supreme Court has been followed and applied by a Division Bench of this Court in Joginder Singh's case (*supra*) and it has been held that a bye-law of a co-operative society cannot be considered as law or to have the force of law. Once a bye-law does not acquire statutory force

then any claim for its enforcement cannot be entertained. Therefore, by process of interpretation and by virtue of lack of statutory force, the argument raised by Mr. M.S. Kang, learned Counsel for the petitioner, cannot be accepted and the same is, hereby, rejected.

Re: Question "B"

15. The second issue whether agenda of the meeting was served on the petitioner could be answered by referring to the pleadings of the parties as well as the original record. In para 11 of the amended writ petition, the following averments have been made:

"That in the very first meeting of the Board after appointment of respondent No. 4, as Chairman of the Markfed vide order P-2 and without setting order P-1 aside the respondents placed an item relating to nomination of Markfed on different institutions in the meeting of the BOD on 18.9.2003 - this was deferred because C.W.P. No. 13316 of 2003 challenging order P-2 was expected to be heard on 13.10.2003. It was put up again in the agenda of the meeting issued for 12.12.2003 as item No. 3. This agenda was neither sent nor served on the petitioner. Had it been sent even by ordinary post, the petitioner would have received it. The petitioner has not received the same. The petitioner came to know about the meeting and agenda item only two days before 12.12.2003, thereafter, he obtained copy from a co-Director and approached this Hon''ble Court by filing this writ petition. The writ petition, although filed on 11.12.2003, could only heard on 16.12.2003 and by that time resolution had already been passed true-copy of the resolution is annexed herewith as Annexure P-3 with its true English translation as P-3/T. Notice of motion was issued for 13.1.2004 - copy of resolutions was directed to be placed on record-copy of resolution was placed on record. The writ petition came for hearing on 13.2.2004 after filing of written statement when it was felt necessary to amend the writ petition because resolution passed had not been challenged. The case was adjourned to 16.2.2004 when on an application filed by the petitioner, this Hon''ble Court was pleased to order that confirmation of proceedings of the meeting dated 12.12.2003 would be subject to the result of the writ petition. Hence, this amended petition."

16. In the corresponding para 11 of the written statement filed by respondent No. 3, the following stand has been taken:

"That the contents of para 11 have not been correctly stated. However, it is a matter of record that in the meeting of Board of Directors held on 18.9.2003, an agenda relating to representation of Markfed on different institutions was considered, but the same was deferred because of pendency of the Civil Writ Petition No. 13316 of 2003 which was then fixed for 13.10.2003. It is also a matter of record that this item was again placed before the Board of Directors of the Markfed. It is wrong that the same was not served or sent to the petitioner. As usual the petitioner being Chairman of the Gurdaspur Central Co-operative

Bank, Batala with its office at Batala, the agenda of the meetings of the Board of Directors, Markfed used to be delivered in his office in the Bank through special messenger. For the meeting held on 12.12.2003, the agenda was sent through special messenger and the same was handed over in the office of said Bank. It is denied that the petitioner was not supplied with the agenda and he has come to know about the same from his Co-Director. AS regards making a reference in the notice for meeting, to disassociate from the proceedings, where some personal interests are involved, this portion remains part of the notice of the Board meeting for the last more than five years and this provision was made by following the instructions issued by the Registrar, Co-operative Societies, Punjab. Rest of the averments made in this para are denied. It is respectfully submitted that the meeting held on 12.12.2003 and decision on the agenda items were duly taken after consideration by the Board."

17. The stand of respondent No. 4 in para 11 of his written statement is as under:

"Contents of para 11 are wrong and denied as submitted by the petitioner. However, it is admitted that since 13.10.2005 was fixed as the date of hearing in C.W.P. No. 13316 of 2003, the item was deferred. However again the meeting was fixed and the notice was issued to the petitioner in the same manner and on the same address on which earlier it used to be given i.e. through the Gurdaspur Central Cooperative Bank Limited, Branch Batala as the petitioner was the Chairman of the Gurdaspur bank. In any case, the petitioner had come to know about the holding of the meeting. It seems that the petitioner did not bring to the notice of the Hon"ble Division bench that the meeting, which is under challenge, has already taken place."

18. The pleadings are at variance and, therefore, in order to find out whether notice of the meeting held on 12.12.2003 was issued to the petitioner, the original record was summoned. A perusal of the original file concerning meeting of the Board of Directors held on 12.12.2003 shows that the notice of the agenda meeting was delivered on 4.12.2003 to Manager, Co-operative Bank, by hand by one Rajwant Singh as is evident from page 49 (which is 4th notice of the meeting appended after three notices received by three other persons). Those notices have been appended at pages 45, 47 and 48. A perusal of page 49 would show that the notice has not been received or delivered to the petitioner. For satisfying the requirement of Rule 80 of the Rules, 15 days clear notice for a meeting of General Body/Committee is required to be given and seven days clear notice for a meeting of smaller body is required to be given to all the members. Rule 80(i) and Rule 80(ia) of the rules are reproduced hereunder to appraise the requirement:

"Rule 80(i): At least fifteen days"s clear notice specifying the date, place, time and agenda for a meeting of a general body/committee and at least seven days clear notice for a meeting of any smaller body set up by either of them, whether convened by the Registrar, the President or otherwise shall be given to all the members of the general body/committee or smaller body, as the case may be;

Rule 80(ia): The Registrar may of his own motion or on a reference made to him, declared the proceedings of the meeting referred to in Clause (i) as invalid, if he is satisfied that the meeting was held without proper notice or without all the members having received the notice for the meeting or if the meeting was not concluded at the appropriate place and time."

19. A perusal of Rule 80(i) of the Rules makes it evident that in the instant case, at least seven days clear notice for the meeting of Board of Directors, whether convened by the Registrar, the President or otherwise, was mandatory to be given to all the members. The use of expression "shall" has to be construed as a mandatory requirement. In other words, the absence of issuance of notice to all the members would result into violation of the Rules. Page 49 of the original file produced before me does not indicate that any notice was given to the petitioner with regard to the meeting of the Board of Directors of Markfed, which was to be held on 12.12.2003 at 12.30 P.M. The question of notice of issuance of notice of the meeting and its mandatory requirement was considered by the Supreme Court in the case of Gajanan Narayan Patil and others Vs. Dattatraya Waman Patil and others, . In that case, the Supreme Court was confronted with the proposition as to whether non-service of notice of special meeting on the Directors rendered the proceedings of the meeting as illegal, as it violated Rule 57-A of the Maharashtra Co-operative Societies Rules, 1961. It was held that such a violation had rendered the meeting as illegal. Relying on its earlier judgment in the case of Jumuna Prasad Mukhariya and Others Vs. Lachhi Ram and Others, their Lordships observed as under:

"... The right to participate in the special meeting as well as to vote for such meeting is a statutory right and it flows from the provision of the Act. Rules and Bye-laws of the Society. It has nothing to do with the democracy. The words "entitled to sit and vote in any meeting of the society" refer to member to sit and vote not in every meeting but in any meeting of the society. The only express bar as provided in Section 27 is that the members, that is, the Directors representatives of the Financial Institutions as well as the Expert Director (co-opted) are not competent to participate only in the election of members of the society. The said Directors have been conferred the right to participate in any meeting including the special meeting of the Board of Directors or of the Managing Committee of the society."

20. The observation of the Supreme Court, no doubt, were made with regard to right of participation of co-opted members or member belonging to other institutions. The right, however, was implicit in the statute and therefore, service of notice was held to be mandatory. If service of notice of a special meeting in the case of Gajanan Narayan Patil's case (supra) has been held to be mandatory, I do not see any reason not to extend and apply the same principle to the facts of the present case. Neither the record shows issuance of notice of the meeting to the petitioner nor it shows its service on him. Moreover, the petitioner had filed unamended writ petition on 11.12.2003, wherein in para 15, an averment

was made with regard to non-issuance of notice to the petitioner in respect of the meeting dated 12.12.2003. Therefore, there is adequate material on record to sustain the argument that there is infringement of Rule 80(i) of the Rules.

21. It is significant to deal with the submission made on this issue by Mr. D.V. Sharma, learned Counsel for respondent Nos. 3 and 4. Mr. Sharma has argued that there is alternative remedy under Rule 80(ia) of the Rules and in case the petitioner is not served with a notice of the meeting, then he could approach the Registrar by filing an appeal. However, the aforementioned argument of learned Counsel cannot be accepted because the Registrar, who is the Appellate Authority in accordance with Rule 80(ia) of the rules, had himself participated in the meeting dated 12.12.2003. Therefore, the Registrar would not be competent to hear any appeal against a resolution to which he himself was a party. Therefore, I am not inclined to accept the submission that in the facts and circumstances of the present case, the remedy of appeal before the Registrar is an efficacious remedy and should have been availed by the petitioner before approaching this Court.

Re: Question "C"

22. The last issue as to whether any opportunity was required to be afforded to the petitioner before withdrawing his power to represent Markfed in the meetings of other co-operative societies/institutions has to be answered by referring to the principles laid down by the Supreme Court in *Ramana Daya Ram Shetty's* case (supra) and Article 14 of the Constitution. However, it has to be first determined and considered whether there is any right of continuation as a nominee authorised to represent Markfed in the meetings of other co-operative societies and institutions. In answer to issue (A), it has been held that the right of the petitioner to represent Markfed is not co-terminus with his tenure or that of the Board of Directors. Once there is no right given to continue either by a statute or implied by any common law principle, then there would be no right of hearing nor there can be any legitimate expectation to continue as a nominee to represent Markfed in the meetings of other co-operative societies/institutions. Therefore, I see no violation of the principles of natural justice before divesting the petitioner the powers of representing Markfed in the meetings of other co-operative societies/institutions.

23. The principles laid down in *Ramana Daya Ram Shetty's* case (supra) are entirely different. In that case, the action of a governmental body was subjected to the requirement of fairness as contemplated by Article 14 of the Constitution. In the selection process, if a member of the same class is not permitted to participate, then there could not be any fair selection. Therefore, in *Ramana Daya Ram Shetty's* case (supra), the selection made by a governmental agency for running a IInd class restaurant and two snack bars at the airport was held to be violative of Article 14 of the Constitution. In the present case, there is no such element, which may lead to the conclusion that the petitioner was entitled to the right of hearing before passing of the resolution in the meeting dated 12.12.2003.

24. In fairness to Mr. D.V. Sharma, learned Counsel for respondent Nos. 3 and 4, another argument must be dealt with: Mr. Sharma has argued that no writ petition is competent against Markfed and he has placed reliance on a judgment of the Supreme Court in the case of General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur (supra). However, the argument cannot be accepted because a Full Bench of five Judges of this Court in Chiman Lal Gupta's case (supra) has concluded that writ is maintainable against Markfed. The judgment was rendered on 3.11.2004. The Full Bench of this Court has concluded that the financial and administrative control of Markfed is in the hands of the State Government. The paragraph dealing with this aspect reads under:

"Initially, the State Government held share capital to the tune of Rs. 935.92 lacs out of Rs. 996.17 lacs. The Managing Director of the Markfed is invariably a member of the Indian Administrative Service (Punjab Cadre). He is the Chief Executive Officer of the Markfed and exercise superintendence and control over all its employees and generally administers its affairs. The Government is empowered to nominate three persons on the Board of Directors of the Markfed. The Registrar, Co-operative Societies, Punjab and the Managing Director are also members of the Board of Directors. Section 26 of the 1961 Act provides that if there is a difference between the government nominee and other members of the Board of Directors, the matter shall be referred to the State Government for its decision and the decision of the Government shall be final. The service conditions of the employees of the Markfed are governed by the Common Cadre Rules framed by the Registrar, Co-operative Societies, Punjab in exercise of its power under Rule 28 of the Punjab Co-operative Societies Rules, 1963. This shows that the State Government exercises deep and pervasive financial as well as administrative control over the Markfed and its functions are essentially governmental functions."

25. In the judgment rendered by the Supreme Court in the case of General Manager, Kisan Sahkari Chini Mills Ltd, Sultanpur (supra), only 50 per cent of the shares in the society were held by the State Government and there is no indication that the administrative control was also in the hands of the State Government. It has further been observed that only 1/3rd members of the society were government nominees. These factors appear to have heavily weighed with the Supreme Court to conclude that no petition was maintainable. However, in Chiman Lal Gupta's case (supra), out of Rs. 996.17 lacs, Rs. 935.92 lacs share capital has been held by the Government besides deep and pervasive administrative control. The five Judges Bench has also dealt with various requirements, which are considered significant for the purpose of determining the character of a body for the purposes of Article 12 of the Constitution. By no stretch of imagination, the ratio of the judgment in the case of General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur (supra) could be applied to the agency like Markfed. More over, in its written statement no objection by Markfed respondent 3 has been raised. It is doubtful whether respondent 4 who is merely a functionary of Markfed could raise such an objection. Therefore, there is no

substance in the argument raised.

26. For the reasons stated in support of Question "B" that no notice of the meeting of the Board of Directors held on 12.12.2003 alongwith its agenda was issued or served on the petitioner, the instant petition deserved to be allowed. The resolution dated 12.12.2003 is hereby declared as illegal and violative of Rule 80(i) of the Rules. It is however, made clear that any action taken in pursuance of resolution dated 12.12.2003 till date shall not be considered as invalid and void. The aforementioned course is necessary to be followed because any participation or representation by respondent 4 on behalf of Markfed in the meetings of other co-operative societies/institutions cannot be annulled. The doctrine of necessity as well as de facto doctrine has to be applied as has been laid down by the Supreme Court in the case of Gokaraju Rangaraju Vs. State of Andhra Pradesh, . The same principle was followed and applied by the Supreme Court in a later judgment in the case of Union of India and Another Vs. Charanjit S. Gill and Others, . Respondent 3 may reconvene the meeting for the purposes of authorising the Chairman, the Managing Directors or any Director of Markfed to represent it on any of the State/National level co-operative societies or institutions by following the provisions of Rule 80(i) of the Rules.