
(1992) 10 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition NO. 6000 of 1986

Jasvir Singh

APPELLANT

Vs

Registrar, Cooperative Societies, Punjab and ors.

RESPONDENT

Date of Decision : 14-10-1992

Acts Referred:

Citation : (1993) 3 LJR 403 : (1992) PLJ 619 : (1993) 1 RRR 105

Hon'ble Judges : N.K.Sodhi, J

Advocate : Mr. I.S. Sidhu, Advocate, Mr. T.P. Singh, Advocate,, Advocates for appearing Parties

Judgement

N.K. Sodhi, J.

1. Elections to the Board of Directors (for short, "the Committee") of the Bhatinda Central Cooperative Bank Limited, Bhatinda (hereinafter call "the Bank") were held on August 13, 1983. The newlyelected members of the Committee held their first meeting on October 4, 1983 and coopted some members as required under the Byelaws of the Bank. Thereafter, another meeting of the Committee was held on October 20, 1983 to elect the officebearers. Term of the Committee according to Section 26(1B) of Punjab Cooperative Societies Act, 1961 (hereinafter referred to as "the Act") and ByeLaw 32 of the Byelaws of the Bank is three years. It could not be disputed on behalf of the petitioners that the period of three years as held in two Divison Bench judgments of this Court in Kartar Singh and other v. State of Punjab others, 1989 P.L.J. 58 : 1989(1) R.R.R. 328 and the Punjab State Cooperative Supply and Marketing Federation Limited, Chandigarh v. The Additional Registrar (Industrial) Cooperative Societies, Punjab, Chandigarh and others, 1984(2) S.L.R. 217, was to commence from the date of election of the Committee. The date of election of the Committee in the instant case being August 13, 1983, its term expired on August 12, 1986.

In a meeting held on August 12, 1986, the Committee adopted the new staffing pattern as a result of which some posts were created including five of the junior

clerks. The Managing Director of the Bank was authorised by the Committee to fill up those vacancies according to law. A copy of the proceedings of this meeting has been appended as Annexure P11 with the writ petition. On August 26, 1986, 12 persons were promoted as senior accountants and soon thereafter 11 junior clerks were promoted as senior clerks with the result that a total of 16 posts of junior clerks became vacant. An advertisement was issued in the press on August 31, 1986 inviting applications for 16 posts of junior clerks and for some other posts. The petitioners and many others filed their applications. After sorting out the applications, the Managing Director invited as many as 3700 candidates for interview. A selection committee was constituted in terms of the instructions issued by the Registrar, which had amongst others the Registrar's nominee, one representative of the Punjab State Cooperative Bank, Managing Director of the Bank, Chairman of the Bank, Deputy Registrar, Cooperative Societies, Bhatinda and three elected Directors of the Bank. The interviews were held from October 1, 1986 to October 4, 1986. The Registrar's nominee and that of the Punjab State Cooperative Bank did not participate in the selection process. The Deputy Registrar, Cooperative Societies, Bhatinda, as a member of the selection committee participated only on October 1, 1986 and thereafter absented himself. It is stated that since the Deputy Registrar, Cooperative Societies, Bhatinda was interfering in the day to day working of the Bank, the then Managing Director filed a civil suit on September 12, 1986 in the Court of Sub Judge Ist Class, Bhatinda for a permanent injunction seeking to restrain the Deputy Registrar from such interference. A temporary injunction was granted and the selections which were going on for recruitment to the posts of junior clerks were allowed to continue but the selection committee was directed not to declare the result. Thereafter, the Deputy Registrar filed an application for the vacation of the ex parte injunction which was dismissed on October 15, 1986 and the interim order as passed earlier was modified and the selection committee was allowed to declare the result which had been withheld. Accordingly, the result of the selection was declared on October 16, 1986 and the petitioners were selected as junior clerks and were issued letters of appointment. It is the admitted case of the parties that the petitioners were not allowed to join duty, in terms of the directions issued by the Deputy Registrar as per his letter dated October 6, 1986 which has been challenged in the present writ petition. To complete the narration of facts, it is relevant to point out that on September 22, 1986, the State Government appointed the Deputy Registrar, Cooperative Societies, Bhatinda as the Managing Director of the Bank under Section 26(2) of the Act and on September 25, 1986, he issued a notice to the previous Managing Director to the effect that the latter was not competent to convene meetings of the selection committee for the selection of candidates for the posts advertised earlier. Against this order of the Deputy Registrar, the then managing Director of the Bank filed Civil Writ Petition No. 5252 of 1986 in this Court and the operation of this order was stayed on September 29, 1986 with the result that the Managing Director of the Bank continued functioning. According to the committee, its terms had commenced w.e.f. October 20, 1983 when

officebearers were elected and the same was to expire on October 19, 1986. Accordingly, the civil suit filed by the Managing Director was then withdrawn on October 20, 1986 presumably because the term, according to the Committee, had come to an end. Similarly, the writ petition filed by the Managing Director was also not pressed and consequently the same was dismissed on November 10, 1986. As already observed earlier, the petitioners who were selected as junior clerks but were not allowed to join because of the directions issued by the Deputy Registrar have filed the present petition under Article 226 of the Constitution challenging the action as being without jurisdiction.

2. At this stage, let me dispose of a preliminary objection raised on behalf of the contesting respondents. It is contended that the writ petition deserves to be dismissed as the same is not maintainable against the Bank which is Cooperative Society registered under the provisions of the Act. I need not go into the merits of this objection as, admittedly in the present petition it is the action of the Deputy Registrar, Cooperative Societies, Bhatinda who is a government functionary, which has been impugned and if he had no authority or jurisdiction, as contended by the petitioners, to issue the impugned directions, a writ can certainly be issued quashing the same. The preliminary objections is, thus, misconceived and stands repelled.

Learned counsel for respondents 2 and 4 who are the contesting respondents, has not been able to point out any statutory provision in the Act or in the Rules which authorised the Deputy Registrar, Cooperative Societies, Bhatinda, to issue directions to the Bank not to allow the selected candidates from joining their duties. This letter issued by respondent No. 2, is, therefore, without jurisdiction. What the learned counsel further contends is that the Deputy Registrar had to issue these directions because the proceedings of the selection committee were held in an illegal manner and that the term of the Committee having admittedly expired on August 12, 1986, all proceedings conducted thereafter by the Managing Director in pursuance of the authorisation given to him in the meeting held on August 12, 1986 (Annexure P11 with the writ petition) were null and void. It was then contended that the impugned directions issued by the Deputy Registrar should not be quashed as that would have the effect of reviving the null and void proceedings of the Committee conducted by the then Managing Director. I find force in this submission. In view of the law laid down by this Court in the cases of

Kartar Singh and others and The Punjab State Cooperative Supply and Marketing Federation Limited, Chandigarh (Supra), it was almost conceded by the petitioners that the term of the Committee came to an end on August 12, 1986. If this is so, then all proceedings conducted by the Managing Director thereafter including the proceedings of the Selection Committee cannot be allowed to stand. On the expiry of the term of the Committee on August 12, 1986, it became functus officio and the Managing Director who was a member of the Committee having ceased to hold office had no authority under the law to

commence the selection process by advertising the posts on August 31, 1986 much less constitute a selection committee and interview the candidates in October, 1986. All proceedings held after August 12, 1986 are hence null and void for this reason. This Court in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution need not quash an illegal order if it would result in reviving an act or proceedings which are also illegal and without jurisdiction and it was so held by the apex court *Gadde Venkateswara Rao v. Government Andhra Pradesh*, AIR 1966 SC 828 when their Lordships observed as follows :

".....If the High Court had quashed the said order, it would have restored an illegal order it would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samiti. The High Court, therefore, in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case...."

I, therefore, in the exercise of my discretion decline to quash the impugned directions issued by the Deputy Registrar, Cooperative Societies, Bhatinda, Annexure P2 with the writ petition, although they are illegal and he had no jurisdiction to issue the same.

3. Reliance was then placed on Section 29 of the Act and it was submitted on behalf of the petitioners that even if the tenure of the Committee came to an end on August 12, 1986 and the proceedings of the selection committee in selecting the candidates for the advertised posts would be protected. This contention of the petitioners has no merit as the provisions of the Section 29 are not attracted in the circumstances of the instant case. There is no question here of any defect in the procedure in constitution of the Committee nor in the appointment of its Managing Director. The term of the Committee having come to an end on August 12, 1986, there was in fact no Committee in existence at all in the eyes of law what to say of any defect in its constitution. The expression "any defect in procedure or in the constitution of the society or of the Committee...." postulates the existence of a committee. Section 29 of the Act does not give any protection to the acts of a Committee or its Managing Director which/who has overstayed its/his term. I am fortified in this view by a Division Bench judgment of this Court in *The Punjab State Cooperative Supply and Marketing Federation Limited, Chandigarh* (supra) and a single bench judgment in *Naginder Singh and others v. State of Punjab & others*, 1973 P.L.J. 728, in both of which a similar view was taken.

In the result, I find no merit in the writ petition and the same is dismissed with no order as to costs.