
(1977) 04 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 4150 of 1975

Joginder Singh, President, Rupar Central Cooperative Bank Ltd., Rupar APPELLANT

Vs

Registrar Cooperative Societies, Punjab . RESPONDENT

Date of Decision : 01-04-1977

Acts Referred:

Citation : (1977) PLJ 310 : (1984) RRR 326

Hon'ble Judges : P.C.Jain, J and A.S.Bains, J

Advocate : Mr. Kuldip Singh, Bar-at-law., Advocates for appearing Parties

Judgement

P.C. Jain, J.

1. Joginder Singh has filed this petitioner under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of mandamus be issued directing respondents 1 to 4 not to give effect to the resolution passed by respondents 5 to 11 dated June 14, 1975, and to remove the petitioner from the office of the President of the Rupar Central Co operative Bank Ltd., Rupar (hereinafter referred to as the Bank). The facts of this case, as given in the petition, may briefly be stated thus :

Elections to the Board of Directors of the Bank, which is a society registered under the Punjab Cooperative Societies Act, 1961 (hereinafter called the Act) was held on November 10, 1974, and the petitioner, one Santokh Singh and respondents 5 to 11 were declared elected as directors of the Bank. A meeting of the Board of Directors was held on December 6, 1974, and the petitioner was elected as the President of the Bank. Apart from the petitioner, Jaswant Singh respondent was elected as VicePresident and Shadi Singh respondent as Managing Director. An executive committee consisting of five directors was also constituted.

It is further stated that the Deputy Registrar, Cooperative Societies, vide his order dated December 13, 1974, set aside the proceedings of the meeting which

was held on December 6, 1974, and also set aside the election of the petitioner as President of the Bank. The petitioner challenged the order of the Deputy Registrar by filing Civil Writ Petition No. 170 of 1975 which was admitted by a Division Bench of this Court and stay was granted to the petitioner, who under that stay order is still continuing as the President of the Bank.

It is further averred that under byelaw 33 of the Byelaws of the Bank, the President of the Bank holds office for three years when once he is elected by the Board of Directors and that there is no provision in the Act, rules and the byelaws which may provide for the moving of a 'noconfidence motion' against the President. Under byelaw 33, a fixed tenure has been provided and the President once elected cannot be removed by way of a 'noconfidence motion'.

It is further stated that respondent Nos. 2, 3 and 4 were extremely annoyed with the petitioner as he had filed a writ petition challenging the legality of the order of the Deputy Registrar and that under the influence of these officers, some of the directors have been won over and a meeting was called for June 14, 1975, wherein a 'noconfidence motion' was passed against the petitioner. A copy of the resolution passed by the Society has been attached to the petition as Annexure P.1. As earlier observed, it is the legality of this resolution which has been challenged by way of this petition.

2. Separate written statements have been filed on behalf of respondent No. 3, respondent No. 4, respondents Nos. 5 to 11 and respondent No. 12, in which the material allegations made in the petition have been controverted.

3. It is conceded at the outset by the learned counsel for the respondent that the 'noconfidence motion' could not be moved against the petitioner in view of the provisions of byelaw 33, but it was sought to be argued by Mr. Khoji, learned counsel for respondent No. 12, that the present petition is not maintainable in view of the decision of their Lordships of the Supreme Court in *Cooperative Central Bank Ltd. and others v. Additional Industrial, Tribunal Andhra Pradesh, Hyderabad and others*, A.I.R. 1970 S.C. 245. It was also contended by the learned counsel that the appropriate remedy available to the petitioner was to get the dispute settled through arbitration as provided under section 55 of the Act.

4. After hearing the learned counsel for the parties, we are of the view that there is considerable force in the contention of the learned counsel for the respondents. In view of the authoritative pronouncement of their Lordships of the Supreme Court, byelaw of a cooperative society is not law, nor does it have the force of law. The relevant observations of their Lordships read as under :

"We are unable to accept the submission that the byelaw 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 a 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 byelaws of the nature that a cooperative society is empowered by the Act to make. The byelaw 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..... The byelaws that can be formed by a society under the Act are similar in nature to the Articles of Association of a Company in corporate under the Companies Act and such Articles of Association have never been held to have the force of law."

5. From the bare perusal of the aforesaid observations of their Lordships of the Supreme Court, there can be no gainsaying that a byelaw of a co operative society Act cannot be held to be law or to have the force of law. In order to overcome the observations of their Lordships, Shri Kuldip Singh, learned counsel for the petitioner, contended that the petitioner has not challenged the impugned act as violative of the provisions of byelaw 33. According to the learned counsel the case of the petitioner is that the action of the committee in passing a vote of noconfidence is violative of the provisions of section 23 of the Act and hence, the present writ petition is maintainable. The precise contention of the learned counsel was that the byelaws are framed by the general body; that under byelaw 33, which is framed by the general body, the President once elected is to hold office for three years; that by passing a vote of noconfidence against the petitioner the committee is acting against a provision which has been framed by the general body and that in this situation the action of the Committee would be violative of the provisions of section 23(1) of the Act. We are afraid, we are unable to agree with this contention of the learned counsel. The relevant portion of section 23(1) of the Act, on which the argument was based by the learned counsel, reads as under :

"The final authority in a cooperative society shall vest in the general body of members....."

The bare reading of the aforesaid provision does not at all support the contention of the learned counsel and goes to show that this provision only gives power of superintendence to the general body of members. We do not agree with Mr. Kuldip Singh, learned counsel, that by passing a resolution in violation of the provisions of byelaw 33 the action of the committee would be deemed to be contrary to the provisions of section 23(1) of the Act. The argument of the learned counsel, though ingenious has absolutely no merit.

6. The matter can be looked at from another angle. Section 55 makes provision for the reference of the dispute to arbitration and under clause (c) of sub section (1), any dispute between the society or its committee and any past committee, any officer, agent or employee, could be referred to arbitration. The petitioner admittedly has not availed of this remedy to which he could resort to. In this situation, the petitioner having not availed of the alternate remedy is not legally entitled to any relief at the hands of this Court in this petition. Thus viewed from

any angle, there is no merit in this petition.

7. No other point was urged.

8. For the reasons recorded above, this petition fails and is dismissed, but in the circumstances of the case, we make no order as to costs.