(2013) 10 P&H CK 0079

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 3144 of 2012

Karan Singh APPELLANT

Vs

Registrar Co-operative Societies RESPONDENT

Date of Decision : 21-10-2013

Acts Referred:

Citation : (2014) 2 PLR 426

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar Jain, J.—The petitioners are the elected members of the Panipat District Cooperative Labour and Construction Federation

Ltd. (for short the ""Society"") who have challenged the notice dated 08.02.2012 for holding the election of the office bearers on 24.02.2012, on the

ground that no proper agenda has been circulated and the persons who cannot participate in the process of election have been summoned.

According to the petitioners, a meeting was held on 06.02.2012 for holding the election of the office bearers of the Society and out of 8 members,

all the 5 petitioners, who have attended the meeting, visited the office on the same day, but the meeting was not conducted because the Presiding

Officer wanted to help the minority group. It is also alleged that the meeting is now fixed for 24.02.2012 and the letters have been sent on

08.02.2012 which is in violation of Rule 110 of the Haryana Cooperative Societies Rules, 1989 (for short the ""Rules""). It is alleged by the

petitioners that the notice dated 08.02.2012 has not only been issued to all the elected members, but also to three office bearers who are the nominees of the Government, including the Assistant Registrar Cooperative Societies. It is submitted that as per Section 29 of the Haryana

Cooperative Societies Act, 1984 (for short the ""Act"") the Government has no. right to nominate its office bearers as members of the managing

committee if it has less than Rs. 1 lakh as share money in the society.

2. While issuing notice of motion on 21.02.2012, this Court ordered that in the meanwhile the meeting may go on but its result would be subject to

the final outcome of the writ petition.

3. After notice, reply has been filed by the official respondents as well as by the society. The stand taken by the society is that meeting on

06.02.2012 was postponed not because of the alleged support by the Presiding Officer to the minority group but it was postponed because the

Presiding Officer could not reach in time as the car in which she was travelling broke down on the way and ultimately she reached the venue by

12.30 noon but by that time, the present petitioners made the application for the purpose of postponement of the meeting. On their application, the

meeting was postponed which was ordered to be fixed for 24.02.2012. It is also submitted that as per bye law No. 26 of the Society, the

Assistant Registrar Cooperative Society of the Department is a permanent member and is not a nominated member. Therefore, he was called upon

to attend the meeting to cast vote. It is further submitted that insofar as the prayer of the petitioners is concerned it is only restricted to quashing the

agenda and the result of the meeting but there is no challenge to the bye law and until and unless the validity of the bye law is challenged, the same

would operate as they are.

4. I have heard learned counsel for the parties and examined the record.

5. The basic issue involved in this case is as to ""whether the Assistant Registrar Cooperative Societies (ARCS) could participate in the meeting and

vote for the election of office bearers of the society"".

6. Bye-law No. 26 of the Society deals with the composition of Board of Directors and is reproduced as under:-

26. The Board of Directors of the Federation shall be constituted as under:-

a) Eight Directors to be elected out of member societies.

b) The Assistant Registrar, Cooperative Societies of the District.

c) Manager of Labour & Construction Federation.

d) Chief Executive of the Federation or his nominee.

7. However, Section 29 of the Act deals with the nomination on committee and reads as follows:-

29. Nomination on committee:- (1) Notwithstanding anything contained in Sub-Section (1) of Section 28,-

(a) Where the Government has-

(i) Subscribed to the share capital of a cooperative society; or

(ii) Guaranteed the principal and interest in respect of debentures issued by the society; or

(iii) Guaranteed the principal and interest in respect of loans and advances to the society; or

(iv) assisted the society with loans and grants; by not less than one lakh rupees, the Government or any person authorized by it shall have the right

to nominate on the managing committee of such society not more than three members or one-third of the total number of elected members of such

committee, whichever is less:

Provided that there shall not be any nominee of the Government in the committee of Primary agriculture Cooperative Society irrespective of the

fact whether the Government has contributed to the share capital or not;

(b) Where the Industrial Finance Corporation, the State Finance Corporation, or any other financial institution or an employer notified in this behalf

by the Government has provided finance to a cooperative society the Industrial Finance Corporation, the State Finance Corporation or the other

financing institution or the employer, as the case may be, shall have the right to nominate one person on the committee:

Provided that in case of a Co-operative Credit Structure the share capital contribution by the Government shall not exceed twenty-five percent of

the paid up share capital and the nomination shall be limited to one member only:

Provided further that in case of a co-operative bank two professional directors having experience as specified by the Reserve Bank of India shall

be co-opted in the committee with full rights, if not already elected.

(2) A person nominated under sub-section (1) shall hold office during the

pleasure of the authority who nominated him.

(3) Where a difference of opinion in respect of any matter arises between any member nominated by the Government or the Managing Director

appointed u/s 31 and other members thereof, the matter shall be referred by the society to the Government whose decision thereon shall be final

and deemed to be a decision taken by the committee.

8. Counsel for the petitioners has argued that as, per balance sheet of the Society as on 31.03.2010, there is no investment of the Government of

more than Rs. 1 lakh to enable it to nominate any person on the managing committee. In this regard, he has relied upon a decision of this Court

rendered in the case of Kulwinder Pal Singh and others Vs. Satora Co-operative Credit and Service Society Ltd. and others, in which it has been

held that if the Government has not contributed share capital of more than Rs. 1 lakh, nomination is not valid u/s 29 of the Act. He has also

referred to a judgment of the Supreme Court in the case of Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and

Others, , in which it is held as under:-

10. 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 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 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.

9. On the other hand, argument of the counsel for the respondents that the ARCS is not a nominee but is a part of the Board of Directors because

of Bye-law No. 26 of the Society and being member of the Board of Directors by virtue of Bye-law, he is entitled to participate in the meeting and

vote for election of the Chairman/Vice-Chairman cannot be accepted because in case of subscription of share capital of less than Rs. 1 lakh, the

ARCS, being the nominee, cannot become the part of the managing committee as it would run contrary to Section 29 of the Act and there is no

dispute that in case a conflict between the provisions of the Act and the Bye-laws, the provisions of the Act would prevail. Thus, in view of the

aforesaid discussion, the present writ petition is found to be meritorious and hence, the same is hereby allowed by holding that since the

Government had no share subscription of more than Rs. 1 lakh in the Society, the ARCS was not competent to be a part of the Board of Directors

for the purpose of participating in the meeting for the election of Chairman/Vice-Chairman of the Society.