

(1988) 08 P&H CK 0059
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2083 of 1987

Kartar Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 04-08-1988

Acts Referred:

Citation : AIR 1989 P&H 143 : (1989) 1 ILR (P&H) 286

Hon'ble Judges : V. Ramaswami, C.J;G.R. Majithia, J

Bench : Division Bench

Advocate : J.P. Sandhu, for the Appellant; D.N. Rampal, for the Respondent

Final Decision : Dismissed

Judgement

1. The precise question which arises for determination in this case is whether the tenure of a managing committee of a cooperative society would start from the date of election or from the date of assuming charge or from the date the election of the Executive Committee, including those of the co-opted members, and the election of the office-bearers is complete.

2. According to the petitioners, since the first meeting of the Managing Committee and of the office-bearers and the co-opted members was held on May 26, 1986, their terms will expire on May 25, 1989; and they seek a declaration that they have got a right to continue in the office till May 25, 1989.

3. The brief facts for the appreciation of the controversy are these.

4. The election of the Managing Committee of the Society-respondent No. 4 was held on March 15, 1984. Petitioners 1 to 5 were elected thereto. Two members of the Society, namely Sarvshri Ram Partap and Zorawar Singh, challenged the election of the Managing Committee held on March 15, 1984, under Ss. 55, 56 of the Punjab Cooperative Societies Act, 1961 (hereinafter called the Act). The Additional Registrar, Co-operative Societies, Punjab, is stated to have stayed the election of the office-bearers and the co-option of the two members to the

Managing Committee and he ultimately set aside the election of the Managing Committee vide order dt/- April 30, 1985. The petitioners challenged the order of the Additional Registrar by way of appeal before the Registrar, Co-operative Societies, Punjab, who accepted the same vide order dated Feb. 18, 1986. Sarvshri Ram Pratap and Zorawar Singh, the members of the committee, challenged the same in revision before the State Government. The revision petition was dismissed vide order dt/- July 24, 1986. The Assistant Registrar, Co-operative Societies, on March 30, 1987, issued an order Annexure P9 that the term of the managing committee had expired on March 14, 1987. He appointed Darshan Singh as administrator of the Society for a period of three months as enjoined by Section 26 of the Act so that the administrator could arrange for the election of the managing committee of the Society within that period. This order of the Assistant Registrar has been challenged in this writ petition. According to the petitioners, the committee held its first meeting on May 26, 1986, and had a right to continue in the office till May 25, 1989, and the order of the Assistant Registrar declaring that the term of the committee had expired on March 14, 1987, is not correct.

5. On behalf of the respondents, a written statement has been filed on behalf of respondent 3 (the Assistant Registrar) who defended his order and pleaded, inter alia, that the election of the managing committee of the Society was held on March 15, 1984. The managing committee held various meetings thereafter. It got loan from the Central Co-operative Bank, Moga, and distributed it among members and effected recoveries. As per the Proceedings Book maintained by the Society, the following meetings were held by the managing committee : --

June 21, 1984; July 2, 1984; July 28, 1984; Aug. 1, 1984; Sept. 4, 1984, Sept. 28, 1984, Oct. 1, 1984; Oct. 29, 1984; Nov. 12, 1984; Nov. 14, 1984; Nov. 16, 1984, Dec. 28, 1984; Jan. 4, 1985; Jan. 7, 1985; Feb. 14, 1985; Feb. 26, 1985; Mar. 27, 1985; April 20, 1985; May 6, 1985; July 19, 1985; Aug. 27, 1985; Oct. 3, 1985; Oct. 7, 1985; Oct. 29, 1985; Nov. 2, 1985; Nov. 12, 1985; Nov. 30, 1985; Dec. 14, 1985; Dec. 23, 1985; Jan. 5, 1986; Jan. 25, 1986; Feb. 17, 1986; Feb. 18, 1986; March 4, 1986; Mar. 6, 1986; March 19, 1986; March 24, 1986; March 25, 1986; March 29, 1986; April, 21, 1986; April 24, 1986; June 14, 1986; June 19, 1986; June 27, 1986; July 2, 1986; July 18, 1986; Aug. 28, 1986; Sept. 2, 1986; and Sept. 3, 1986.

The respondent took a firm stand that the tenure of the managing committee had expired on March 14, 1987, and he was justified in appointing an administrator for managing the affairs of the society and for holding fresh elections.

6. The learned counsel for the petitioners relying upon a decision in *Baljit Singh v. State of Punjab*, 1986 Pun LJ 356, argued that the first meeting of the committee, after the election of the office-bearers and co-option of the members, was held on May 25, 1986, and the period of three years had to be reckoned from this date.

7. In order to appreciate the submission of the learned counsel it will be useful to reproduce the relevant provisions of the statute : --

"Section 26(1) The members of the committee of a co-operative society shall be elected in the manner prescribed and no person shall be so elected unless he is a shareholder of the society.

.....

(1-B). The term of office of a committee shall be three years :

xxxxx

(1-C). Each committee shall ninety days before the expiry of its term, make arrangements for the constitution of a new committee in accordance with the provisions of this Act and rules and bye-laws made thereunder.

(1-D). Where any committee has ceased to hold office and no committee has been constituted in accordance with the provisions of this Act and rules and bye-laws made thereunder, the Registrar may, by an order in writing, appoint a Government employee as an Administrator for such period as may, from time to time, be specified in the order and the Administrator shall, before the expiry of the period of his appointment, arrange for the constitution of a new committee in accordance with the provisions of this Act and rules and bye-laws made thereunder :

X X X X x"

Rule 23 of the Punjab Co-operative Societies Rules, 1963 (hereinafter called the Rules) is in the following terms : --

23. "The members of the committee of a Co-operative Society shall be elected in accordance with the rules given in Appendix "C".

(1) The Registrar in his direction u/s 26-A shall intimate the number and class of persons to be co-opted in the committee of a co-operative society.

(2) The Committee of a Co-operative Society, to which a direction u/s 26-A has been issued by the Registrar, shall immediately after the receipt of such direction, call a meeting in accordance with these rules and the bye-laws.

(3) The Committee shall then co-opt the number of members specified in the direction issued by the Registrar from amongst the member belonging to Scheduled Castes or Scheduled Tribes or Backward Classes or from amongst members who hold, as landowner or tenant or as both not more than two standard acres of agricultural land;

Provided that the members so co-opted fulfil the conditions and qualifications prescribed for the elected members of the committee in these rules or in the bye-laws of such a Co-operative Society.

APPENDIX "C" PART I

1. Definitions.-- In this Appendix, unless the context otherwise requires : --

- (a) "Election" means election to the committee;
- (b) "Returning Officer" means the Registrar or any person authorised by him in this behalf by a special or general order;
- (c) "Presiding Officer" means a person appointed by the Returning Officer to be in charge of the polling station for the purpose of the election;
- (d) "Manager" means any person appointed as such by the Registrar for the purpose of the provisions contained in this Appendix and if no such person is appointed, then the head of office of a co-operative society, by whatever name called, to whom the management of the society is entrusted;
- (e) "Voter" means a person entitled to vote under the rules;
- (f) "Representative" means an elector who is authorised to vote on behalf of a cooperative society in the affairs of another cooperative society; and
- (g) "Candidate" means a voter who files his nomination papers to seek election of a member of the committee of a co-operative society."

Section 2(b) of the Act defines the term "committee" which means the governing body of a co-operative society, by whatever name called, to which the management of the affairs of the society is entrusted. Thus, the committee is a governing body of a cooperative society unless the context otherwise requires. Section 26 envisages that the members of a committee of a co-operative society shall be elected in the manner prescribed and the term of office of a committee shall be three years. The period of three years as envisaged by sub-s. (1B) of Section 26 shall commence from the date of election or when it enters into office. The constitution of the committee and its entering into office is not dependent upon the association of the office-bearers or the cooption of the members. The committee is the one which is envisaged u/s 2 of the Act, and it will be deemed to have entered into office on the day it positions itself in office. The period of three years is to be reckoned from that date. Subsection (1B) of Section 26 of the Act envisages that the term of the committee cannot be longer than the one provided therein. The members of the committee cannot extend their term by deferring the election of the President and the Vice-President. If in any event, the election of the office-bearers is delayed, the term of the office-bearers will be co-extenso with the term of the committee. Similarly if for some reason, the cooption of the members of the committee or nomination thereof is delayed it will not affect the constitution of the committee. The meeting of the elected members of the committee who have been elected in the manner prescribed under Rule 23 of the Rules have to take place for co-opting members as envisaged by the Rules and elect office-bearers and this step itself will amount to assumption of office by the committee. The committee has to co-opt members

and elect office-bearers. This will be only after they have assumed office. However, the situation will be different when the members of the committee are not allowed to assume office either by a stay order of the court or by the Registrar, Co-operative Societies.

8. In Harbans Singh Romana and Others Vs. State of Punjab and Others, , it was held by D. Section Tewatia, J. :

"If the petitioners" contention is accepted that the term of the Directors shall have to be co-extensive with that of the President and Vice-President, then the Directors cannot extend their own term by deferring the election of the President and Vice-President till after the fag-end of their term and then claim that since the term of the President and Vice President under the Bye-laws is three years, so the members of the Board would be entitled to function as such for that extended period which would be co-extensive with the term of the President and Vice President. The contention is, obviously, untenable. The Directors cannot be permitted to have their term longer than the one provided by Section 26(1B) of the Act."

9. A similar view was taken by a Division Bench of this Court in Punjab State Cooperative Supply and Marketing Federation Ltd. v. Additional Registrar (1984) 2 S LR 217. It was held as under: --

"As regards the nomination of members of the Committee envisaged u/s 26(1) of the Punjab Co-operative Societies Act, it is submitted by Mr. Kuldeep Singh that there is no obligation on the part of the Government to make such nomination. The Government may nominate such members not exceeding three or they may not nominate. Furthermore, the nomination may be done either before the first meeting of the Committee or at any time thereafter. The crux of the matter as submitted by Mr. Kuldeep Singh is that the elected members had positioned themselves in office on May 23, 1980 and their tenure would start from that date. In view of these facts, the contention raised by Mr. Sodhi that the meeting of the Board of Directors held on June 22, 1983 was a valid one is repelled."

The view taken by the Division Bench in Punjab State Co-operative Supply and Marketing Federation Ltd.'s case (supra) is correct keeping in view the amended provisions of Section 26(1B) of the Act read with R. 23 and Appendix "C" of the Rules. However, Tewatia, J., in Lashka Singh v. State of Punjab 1985 PLR 503, while interpreting R. 23 of the Rules, in conjunction with Section 2(b) of the Act, held that the governing body of a society comprises of Board of Directors, officebearers, including the Executive Committee.

The election of the governing body is not complete unless the office-bearers and the members of the committee are also elected. The view taken by the learned single Judge is not correct, as it runs counter, to the Division Bench judgment referred supra, to which Tewatia, J., was a party. The judgment in the Punjab State Co-operative Supply and Marketing Federation Ltd. (D.B.) was rendered on May, 29, 1984, while Lashkar Singh's case (supra) was decided on Dec. 21,

1984. It appears that the decision rendered by the Division Bench in the Punjab State Co-operative Supply and Marketing Federation Ltd. (supra) was not brought to the notice of the learned single Bench who decided Lashkar Singh's case (supra). The following observations in this case run counter to the conclusion arrived at by the Bench : --

"Rule 23 of the Punjab Co-operative Societies Rules, 1963 (hereinafter referred to as the Rules) provides for the election of the committee of a Co-operative Society in accordance with the rules given in Appendix "C". In Appendix "C" "election" is defined as election to the committee and "voter" is defined to mean a person entitled to vote under these rules. Expression "Committee" is defined by Section 2(b) of the Act as meaning the governing body of a co-operative society by whatever name called, to which the management of the affairs of the society is entrusted. The governing body of a society like the present one comprises of the Board of Directors and its office-bearers including the executive committee. The election of the governing body is not complete unless its office bearers and the members of the executive committee are also elected. That means election of the office bearers and the members of the executive committee also form part of the election of the governing body which in view of the definition of expression "committee" means the committee and they are to be elected in the manner provided in Appedix "D". Clause (iv) of Appendix "C" charges the Manager of the Bank to arrange for election to the committee. The "manager" in Appendix "C" is defined to be a person either appointed as such by the Registrar for the purpose of the provisions contained in Appendix "C" or where no such person is specifically appointed, then the head of office of a cooperative society, by whatsoever name called, to whom the management of the society is entrusted. It is not disputed that the Manager is the head of the co-operative bank in question and he is designated as the Manager of the Bank."

The Bench had arrived at a firm conclusion while interpreting Section 26(1B) of the Act that the elected members of the committee will be deemed to have assumed office when they had position themselves in office and this will be the date of their election;

10. Tewatia, J., in Harbans Singh Romana and Others Vs. State of Punjab and Others, also had taken a similar view. The view taken in Lashkar Singh's case 1985 P LR 503 (supra) is not correct since it runs counter to the earlier decision of the Division Bench. We overrule the same. In Baljit Singh case 1986 P LR 356 (supra), D. V. Sehgal, J., principally relied upon the decision in Lashkar Singh's case (supra) to come to the conclusion that the governing body of a society is not complete until and unless besides the Directors, its office-bearers and the members of the committee are also elected. The following observations in Baljit Singh's case (supra) are very pertinent :--

"As I have observed right in the beginning of the above discussion as ruled in the judgment in Lashkar Singh's case, the Committee of the Co-operative Bank, i.e., its governing body is not complete until and unless besides the Directors, its

office bearers and the members of the Executive Committee are also elected. The office-bearers and the members of the Executive form part of the structure of the governing body of the Cooperative Bank which comes within the meaning of the expression "committee" as defined by Section 2(b) of the Act."

The decision rendered in Lashkar Singh's case (supra) has already been overruled, and for the same reasons we overruled the judgment rendered in Baljit Singh's case

(supra).

11. In *State of Punjab v. Managing Committee, of the Patti Primary Co-operative Land Mortgage Bank Ltd.* reported as 1980 PLR 44, a Bench of this Court while interpreting Section 26(1B) of the Act, held as under : --

"Accordingly I am of the view that the term of office of a committee under sub-Section (1B) of three years would start from the date of assuming charge by the committee and not from the date of its election. In the present case, it is not disputed that the committee assumed charge of its office on 7th of May, 1974, and therefore, the learned single Judge was right in saying that the term of three years would start from that date."

In the above case, the Managing Committee of Patti Primary Co-operative Land Mortgage Bank Ltd., Patti, was elected on Sept. 30, 1983, and before the managing committee could assume charge, a writ petition was filed in this High Court challenging the election of the managing committee in which, at the motion stage, an injunction was issued restraining the managing committee from assuming the charge. The injunction order was confirmed till the final disposal of the petition. The writ petition was dismissed on May 7, 1974. It was under these circumstances that the Bench held that the period of three years will be reckoned from the date the committee assumes charge. The view taken by the Bench was in the peculiar facts and circumstances of that case. Otherwise, what the Bench meant was that the period of three years will be reckoned from the date the committee assumed office.

12. The committee will be deemed to have entered the office after the, election when it takes steps for electing the office-bearers or co-opted the members or transacted business of the society.

13. In the present case, the election of the managing committee of the society was held on March 15, 1984. There was no impediment in the way of the committee from entering the office. There were no such circumstances as pointed out in the *State of Punjab v. Managing Committee of the Patti Primary Co-operative Land Mortgage Bank Ltd.* 1980 P LR 44(supra). Consequently, the committee will be deemed to have entered the office on Mar, 15, 1984, and the period of three years has to be reckoned from that date which will expire on Mar. 14, 1987. If for any reason, the committee has delayed the election of the office-bearers or the co-option of members it will not mean that the committee has not

entered the office. The committee was in a position to enter the office. Resultantly, the order issued by the Assistant Registrar, Co-operative Societies, Punjab, holding that the term of the society expired on March 14, 1987, is upheld and the appointment of administrator for holding fresh elections is in conformity with the mandatory provisions of Section 26(1D) of the Act. We do not find any infirmity in the order. The writ petition is accordingly dismissed. However, in the circumstances of the case, we leave the parties to bear their own costs.

14. A copy of this order be sent forthwith to the Registrar, Co-operative Societies, Punjab, for taking such steps as are necessary for holding fresh elections to the managing committee of the Society.