
(2010) 12 P&H CK 0640

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No"s. 11555 and 11588 of 2010

Kashmir Singh

APPELLANT

Vs

The Registrar Co-operative Societies and Others

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Citation : (2011) 162 PLR 271

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Judgement

Kanwaljit Singh Ahluwalia, J.—By this common order, two writ petitions viz. Civil Writ Petition No. 11555 of 2010 titled as "Kashmir Singh v. The Registrar, Cooperative Societies, Punjab and Ors." and Civil Writ Petition No. 11588 of 2010 titled as "Ranbir Singh v. The Registrar, Co-operative Societies, Punjab and Ors." shall be decided altogether.

2. In Civil Writ Petition No. 11555 of 2010 titled as "Kashmir Singh v. The Registrar, Co-operative Societies, Punjab and Ors.", a grievance has been made that Respondent No. 4-Gurmail Singh is continuing as office bearer of Respondent No. 3-The Sikri Co-operative Agriculture Service Society Limited (hereinafter referred to as "Society"), since 1993. It has been specifically stated in para No. 17 of the writ petition, as under

...17. That Respondent No. 4 was elected as member of the committee of the Society in the term of the Committee from 1993 to 1998, 1998 to 2003, 2003 to 2008 and from 22.9.2008 till date, he is continuing a President of the Managing Committee of the Society. Respondent No. 4 was ineligible to contest in view of the restriction imposed by Section 26-B(2), still he contested the election. The Respondent No. 4 knowingly and deliberately made false declarations in his nomination papers that he does not possess any disqualification under the Act, the rules and the by-laws of the Society knowing well that he was ineligible. Present term is his fourth continuous term without the break of period of one term required after availing two continuous terms u/s 26-B(2) of the Act.

3. Learned Counsel for the Petitioner has drawn my attention to Section 26-B(2) of the Punjab Co-operative Societies (Amendment) Act, 1993 (hereinafter referred to as "1993 Act"), which reads as under:

26-B(2) No person shall be eligible for being elected to the committee of any cooperative society after he has served on the committee of that co-operative society for two continuous terms, unless a period of not less than one term has expired since he last so served

4. It is stated that in view of the mandate as laid down in Section 26-B(2) of the 1993 Act, Respondent No. 4-Gurmail Singh cannot hold the office of Respondent No. 3-Society, for more than two continuous terms unless one term has expired. Since 1993 Respondent No. 4 is continuing as office bearer of the Society, thus, his continuation in the office of Respondent No. 3-Society is against the mandate of Section 26-B(2).

5. In Civil Writ Petition No. 11588 of 2010 titled as "Ranbir Singh v. The Registrar, Co-operative Societies, Punjab and Ors.", it has been stated that Respondent No. 4-Nirmal Singh has been elected as Vice President of Respondent No. 3-Society and is continuing to be its office bearer since 1993. The similar argument has been raised regarding the non-competence of Respondent No. 4 to hold the office of Vice President of Respondent No. 3-Society.

6. After going through the contents of both the writ petitions and hearing learned Counsel for the parties, this Court is of the view that at first instance, Respondent No. 1 Registrar, Co-operative Societies, Punjab, should examine the averments made in both the writ petitions and the provisions of Section 26-B(2) of the 1993 Act and take a conscious decision regarding the continuation of Respondent No. 4, in both the writ petition as office bearers of Respondent No. 3-Society.

7. Mr. Ashwani Prashar, Advocate, appearing for Respondent No. 4, in both the writ petitions, has submitted that the remedy available with the Petitioners was to file the election petition u/s 27 of the 1993 Act. He has relied upon a judgment rendered by a Division Bench of this Court in Kuldeep Singh Mangewal v. State of Punjab 2000 (2) PLJ 118 to contend that in case the election petition is not filed, pre-election disqualification cannot be made ground to unseat the office bearers. In support of his contention, further reliance has been placed on Ravinder Sharma v. The Registrar, Cooperative Societies, Punjab, Chandigarh and Ors. (Civil Writ Petition No. 18240 of 2003) to say that the alternative remedy of filing election petition, if it is available, the writ Court should be hesitant to exercise its writ jurisdiction.

8. I have given my thoughtful consideration to both the above cited judgments and on the facts, the same are distinguishable. If there is a pre-election disqualification which, by acceptance of the nomination papers, the election stands cured, then the ratio of Kuldeep Singh Mangewal's case (supra) will be applied but if the disqualification is such which cannot be cured and which ipso

facto make the person ineligible to hold office, it cannot be said that subsequently, the office bearer cannot be removed from the office. Say for an instance, the candidate is insolvent and is not in a right mental state to hold the office, that disqualification will disentitle the holder of the office and the same can be made basis for removal of the office bearer.

9. Respondent No. 4, in both the writ petitions, were disqualified to hold the office as they had already occupied the office of Respondent No.3-Society for more than two continuous terms. The object of the Cooperative movement is the maximum participation of the members. Section 26-B(2) of the 1993 Act was enacted with the purpose that the influential people do not monopolize the management of the Cooperative Society. Therefore, the disqualification incurred by the Respondents is never cured. It continued and gave a recurring cause to any member to question their continuation in the office of the Society.

10. Respondent No. 4, in the both the writ petitions, were holding the office of Respondent No. 3-Society since 1993. This fact was specifically stated in para 17 of the writ petition. Conveniently, Respondent No. 4, in both the writ petitions, in their replies filed, have not denied the averments made in para 17 of the writ petitions, whereas it was incumbent upon the holders of the office to specifically deny the same.

11. Another judgment relied in the case of Tehal Singh Vs. The Additional Secretary Cooperation, is not applicable on the facts of the case as the candidate therein was an employee of the Shiromarii Gurdwara Parbandhak Committee and it was held that a statutory employee, if not disqualified at the time of acceptance of nomination papers, can only be disqualified by way of election petition.

12. This Court is primarily of the view that Respondent No. 1- Registrar, Co-operative Societies, Punjab, ought to look into the matter and verify the fact as to whether Respondent No. 4, in both the writ petitions, have continued in the office for two consecutive terms or not. In case, the Registrar finds that Respondent No. 4, in both the writ petitions, have continued for more than two terms, then he shall pass the necessary orders u/s 26-B(2) of the 1993 Act, after hearing all the concerned. The Registrar, in view of the observations made in this order, shall take decision within a period of three months from the date of receipt of a certified copy of this order.

13. With the observations made above, the present writ petition is disposed of.