
(1999) 11 P&H CK 0100
In the Punjab And Haryana At Chandigarh
Case No : Civil Petition No. 15805 of 1997

Kuldeep Singh Mangewal

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 30-11-1999

Acts Referred:

Citation : (2000) 2 ILR (P&H) 94 : (2000) 125 PLR 232 : (2000) 2 RCR(Civil) 426

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

Bench : Division Bench

Advocate : Sukhbir, for the Appellant; Gurminder Singh, D.A.G., for respondent Nos. 1 to 5, P.S. Patwalia and Dipinder Singh, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sodhi, J.—Whether a person who is ineligible but is elected as a member of the governing body of a co-operative Society could cease to hold his office under Clause (f) of Rule 26 of the Punjab Co-operative Societies Rules, 1963 (hereinafter called the Rules) is the question of law which arises for decision in this writ petition.

2. Petitioner is a member of the Mangewal Co-operative Milk Producers Society Limited (for short the Society) which is a primary Society registered under the Punjab Co-operative Societies Act, 1961 (hereinafter referred to as the Act). He was elected its President on 26.7.1995 for a term of five years. Even prior to 26.7.1995 he was its President. He is also a member of the Nizampur Co-Operative Agricultural Service Society Limited (for short the Nizampur Society) from which he took a loan of Rs. 7,500/- on 3.6.1991. The loan was not repaid within time and he thus became a defaulter since 31.1.1992. It is common case of the parties that the loan was paid back on 6.6.1997. The Society is a member of the Ludhiana District Co-operative Milk Producers Union (hereinafter called the Milk Union) which is a central Society registered under the Act. Elections to the Board of Directors of the Milk Union were held on 30.8.1994 in which 12 Directors were elected for a term of five years including the petitioner who

represented the Society. Office bearers of the Milk Union were subsequently elected on 5.9.1997 and the petitioner was elected its Chairman. The Assistant Registrar, Co-operative Societies, Samrala made a report on April 25, 1997 to the Deputy Registrar along with his recommendation forwarded the report to the Joint Registrar, Co-operative Societies, Patiala Division who, while exercising the powers of the Registrar, by his notice dated August 7, 1997 called upon the petitioner to show cause why he should not cease to be a Director of the Milk Union under Rule 26(f) read with Rule 25 (a) of the Rules. Petitioner submitted his reply and took the plea that he was not a defaulter either of the Society or of the Milk Union and, therefore, the provisions of Rule 26 read with Rule 25 of the Rules were not attracted. It was also pleaded that he had been elected President of the Society and Chairman of the Milk Union on 26.7.1995 and 30.8.1994, respectively when he was already a defaulter, on the date of his election and that Rule 26 of the Rules was not applicable as that Rule, according to the petitioner, would apply only where the disqualification is incurred after the election. It was further pleaded that the entire amount of the outstanding loan of Rs. 16,090/- had been cleared much prior to the issuance of the show cause notice and, therefore, the petitioner was not in default when the show cause notice was issued and, thus, no action could be taken against him. The Joint Registrar considered the reply filed by the petitioner and after affording an opportunity of personal hearing to him held that since he (petitioner) was a defaulter of the Nizampur Society with effect from 31.1.1992 and repaid the loan only on 6.6.1997, he could not remain as Chairman of the Milk Union nor as President of the Society. Accordingly, by his order dated 29.9.1997, the Joint Registrar declared that the petitioner ceased to be President of the Society and Chairman of the Milk Union under Rule 26(f) read with Rule 25(a) of the Rules. It is against this order that the present writ petition has been filed under Article 226 of the Constitution.

3. Counsel for the parties have been heard.

4. When this writ petition came up for hearing on 21.10.1997 the operation of the impugned order was stayed as a result of which the petitioner continued functioning as Chairman of the Milk Union as also President of the Society. He was elected as a Director of the Milk Union on 30.8.1994 for a term of five years which term has expired during the pendency of the writ petition. The prayer in the writ petition in so far as it relates to the setting aside of the impugned order qua the cessation of the petitioner as Chairman of the Milk Union has, therefore, become infructuous.

5. We are now left to decide the question whether the petitioner could cease to hold office as member of the governing body of the Society to which post he was elected on 26.7.1995 for a term of five years. The answer to this question depends upon the interpretation of Rules 25 and 26 of the Rules. Rule 25 prescribes the disqualifications for membership of a committee and no person is eligible for election as a member of the committee if he incurs any of those

disqualifications would be ineligible to contest the election and his nomination papers would be rejected at the time of scrutiny. Rule 25(a) of the Rules with which we are concerned in the present case is reproduced hereunder for facility of reference:-

"25. Disqualification for membership of committee.- No person shall be eligible for election as a member of the committee if -

(a) he is in default to any Co-operative Society in respect of any sum due from him to the Co-operative Society or owes to any Co-operative Society an amount exceeding his maximum credit limit;

xxx xxx xxx xxx xxx xxx.; Rule 26 of the Rules, on the other hand, provides for the post-election disqualifications and if a person incurs any of those disqualifications after he has been elected a member of the Committee he shall cease to hold his office as such. Rule 26 of the Rules reads as under:-

"26. Cessation of membership of committee.- A member of the committee shall cease to hold his office as such if he:-

(a) continues to be in default in respect of any sum due from him to the Co-operative Society for such period as may be laid down in the bye-laws;

(b) ceases to be a member;

(c) is declared insolvent;

(d) becomes of unsound mind;

(e) is convicted of an offence involving dishonesty or moral turpitude; or

(f) becomes subject to any disqualification which would have prevented him from seeking election, had he incurred that disqualification before election."

A reading of all the clauses of the aforesaid Rule makes it clear that the disqualifications referred to therein must be incurred by a person after he has been elected a member of a committee and it is on the incurring of any of those disqualifications that he will cease to hold his office as such. It is not in dispute that the petitioner was a defaulter of the Nizampur Society since 31.1.1992 and he paid back the debt on June 6, 1997. When he contested the election as President of the Society on 26.7.1995 he was in default to that Society and therefore, he was not eligible to contest. He, however, contested the election successfully and became the President. The argument of the learned counsel is that Rule 26 prescribes the post-election disqualifications i.e. disqualifications which a person should incur after he became a member of the committee but since the petitioner had incurred the disqualification prior to his election, Rule 26 would not apply. There is merit in this contention. Clause (f) of Rule 26 under which action has been taken against the petitioner provides that a member of a committee shall cease to hold his office as such if he "becomes" subject to any disqualification which would have prevented him from seeking election had he

incurred that disqualification before election. The word "becomes" in Clause (f) leaves no room for doubt that the disqualification has to be incurred after he was elected a member of the committee. If a person had incurred the disqualification even prior to his election as member of the committee then Clause (f) of Rule 26 of the Rules would not apply. Rules 25 and 26 deal with disqualifications of persons to become members of a committee or to continue as members thereof and, therefore, in the very nature of things the provisions of these Rules have to be construed very strictly. In the case before us the petitioner was already a defaulter when he contested for the membership of the committee and, therefore, Clause (f) of Rule 26 of the Rules will not be attracted. It is not the case of the respondents that the petitioner incurred the disqualification under Clause (a) of Rule 26. It is contended by the learned Deputy Advocate General that the petitioner was ineligible when he contested the election as President of the Society and, therefore, he was subject to a disqualification which prevented him from seeking election. This is so but having successfully contested the election as member of the committee of the society and thereafter its President even though he was ineligible, his election could be challenged by raising an election dispute u/s 55 of the Act but his membership could not be ceased under Clause (f) of Rule 26 of the Rules. It must, therefore, be held that Clause (f) of Rule 26 has no applicability to a case where a person though ineligible to seek the election has yet been elected as a member of a Committee when he has not incurred the disqualification after the election. In this view of the matter, the impugned order dated 29.9.1997 holding that the petitioner had ceased to be the President of the Society cannot be sustained.

In the result, the writ petition is allowed and the impugned order dated 29.9.1997 quashed. There is no order as to costs.