(1989) 09 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 101 of 1988

Kulwinder Pal Singh and others — APPELLANT

Vs

Satora Co-operative Credit and Service Society Ltd. and others — RESPONDENT

Date of Decision : 05-09-1989

Acts Referred:

Citation : AIR 1990 P&H 246 : (1991) 1 ILR (P&H) 354 : (1990) 97 PLR 68

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : G.S. Sandhu, for the Appellant; S.S. Dalal, for the Respondent

Judgement

(1) This judgment will also dipose of Writs Petitions Nos. 10741 of 1988, 1586 of 1988, 10064 of 1989 and 5979 of 1988 as the question involved is common in all these cases.

(2) The facts giving rise to Civil Writ No. 101 of 1988 are that the petitioners are members of the Satora Co-operative Credit and Service Society Limited, Satora. After the term of the earlier Committee expired the election of the new Committee had taken place. The petitioners as well as Jagir Singh, Phuman Singh and Sarup Singh were elected as members of the Committee. According to the bye-laws, applicable to the Society, if a woman and a Harijan members are not among the elected persons, they are to be co-opted and as such the Manager of the Society had called the meeting for January 8, 1988. The notices were issued to the elected members as well as to respondents Nos. 3 to 5, who were the nominees of the Government and that of the Financing Institution, that is, the Kurukshetra Central Co-operative Bank Limited for the purpose of co-opting a Harijan as well as woman member. These three members were nominated as provided u/s 29 of the Haryana Co-operative Societies Act, 1984 (hereinafter shall be referred to as the Act).

(3) As per the petitioners, according to Section 29 of the Act, the Government

has the right to nominate not more than three members or one third of the total members elected on the Managing Committee of the Society if it has subscribed the share capital to the Society not less than rupees one lac. Similar is the position of the Financing Institution. In paragraph No. 5 of the Writ Petition, it has been averred that in the present case the Government had share of Rupees 16490/- only, in the respondent Society and the Government loan is Rs. 1125/- and according to the petitioners, as such, the Government nominees have no right to participate and to vote in the affairs of the Society nor the Government was legally competent to nominate them. The petitioners also moved Civil Misc. No. 1527 of 1988 and along with it they placed on record a copy of Annexure P/2 which was a letter from the Registrar, Co-operative Societies dated January 7, 1988 written to all the Assistant Registrars of Co-operative Societies in Haryana State. The letter was written on the subject of appointment of Government nominees in Co-operative Credit and Service Societies (Mini Banks).

(4) According to the petitioners, in view of the said letter Annexure P/2, the Government was not competent to nominate any person unless it has contributed the share capital to the society or assisted the society by way of loans and grants to the extent of Rs. 1 lac. Since the Government has not contributed to the extent of Rs. 1 lac, the provisions of Section 29 of the Act were not complied with and the nomination, if any, of respondents 3 to 5 was without jurisdiction. It was also submitted that the second question to be decided in this petition is that the Government nominees or the Financing Institution nominees have no right to take part in the cooption of the Society. According to the petitioners, only the members elected are competent to coopt a Harijan or a woman member and for that purpose a nominee of the Government, if any, could not be allowed to take part in the said cooption. In support of this contention, reference was made to Ram Kishan Hooda v. The Registrar Co-operative Societies, Haryana 1981 P LJ 481 and Lashkar Singh v. State of Punjab 1985 P LJ 503.

(5) In the Return filed on behalf of respondents 1 to 3 and 5, one of the preliminary objections taken is that the petitioners have not exhausted the alternative remedy available to them under S. 102 of the Act and thus the present petition was not maintainable. On merits, it has been submitted that since the Government has subscribed share capital, it has the right to nominate and the persons so nominated have the right to participate in the affairs of the Society including the cooption.

(6) The main controversy revolves around the interpretation of S. 29 of the Act which reads as under : --

"S. 29(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 authorised 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;

(b) Where the Industrial Finance Corporation, the State Finance Corporation, or any other Financing Institution or an employer notified in this behalf by the Government has provided finance to a co-operative 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.

(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.

(4) Notwithstanding anything contained in the bye-laws of a society, the Government may, by general or special order, direct that on the committee of such society or class of societies, as the Government may specify, there shall be coopted by members of the committee of such society one-third members belonging to the weaker section out of whom at least one such member shall belong to the Scheduled Caste;

Provided that such co-option shall not be made if one-third members belonging to the weaker section including that of Scheduled Caste have been elected on such committee.

Provided further that in case no such co-option is made, the Registrar may nominate such number of members."

(7) According to the petitioners, all the four clauses are governed by the provisions, that is, "by not less than one lakh rupees". Since the Government has not subscribed to the share capital of the Society to the extent of rupees one lakh, it has no jurisdiction to nominate as contemplated under S. 29 of the Act. Whereas, according to the respondents the said words "by no less the one lakh rupees" only governs clause (iv) of sub-section (1) of Section 29 of the Act and not all the other three clauses, that is, (i), (ii) and (iii). There seems to be force

in the contention raised on behalf of the petitioners. All the four clauses are governed by the said Words, that is "by no less than one lakh rupees" as is evident from the reproduction of the Section. That is why the Registrar vide Annexure P 2 made it clear to all the Assistant Registrars that "Section 29 of the Haryana Co-operative Societies Act, 1984 empowers the Stale Government to nominate not more than three members or one third of the total number of elected members of the Managing Committee whichever is less, where the Government has subscribed to the share capital or guaranteed the principal and interest in respect of debentures or guaranteed the principal and interest in respect of loans and advances or assisted the society with loans and grants by not less than one lac rupees." Of course, the four clauses are independent, but as regards the words. "by not less than one lakh rupees" that does govern all the four clauses and is not applicable to clause (iv) only as argued on behalf of the respondents. As observed earlier, this was made clear by the Registrar himself to all the Assistant Registrars vide letter Annexure P 2 dated January 7, 1988. Since the factual position given by the petitioners in paragraph 5 that in the present case the Government has a share of Rs. 16400 -only in the respondent society and the Government loan is Rs. 1125/- has not been denied in the return filed on behalf of the respondents. It is, therefore, evident that the condition of "by not less than one lakh rupees" is not fulfilled as provided under S. 29 of the Act. That being so the nomination, if any, made by the State Government was violative of the provisions of S. 29 of the Act. Apart from that, after every clause i.e. (i), (ii). (iii) and (iv), there is a semi colon, which makes it abundantly clear that the words" by not less than one lakh rupees etc." apply to all the four clauses. Moreover, if it would not have been so, then why the Government should ever resort to clause (iv) and will be satisfied by subscribing a nominal amount under the other clauses.

(8) However, no fault could be found with the nominees made by the State Financial Corporation in view of the provisions of S. 29 of the Act as there is no limit of amount in their case.

(9) On this short ground alone, the cooption made of the Harijan and the woman members is liable to be quashed.

(10) As the second question is whether the Government nominees or the financing institution nominees have the right to take part in the cooption of the Co-operative Society or not? As regards the bye-laws of the Society it makes it abundantly clear as under:--

R. 34(A) The Managing Committee shall consist of the following:--

(a) Seven elected members of whom five shall be former members and two non-former members,

(b) Not more than three nominees of the Government where it has contributed to the share capital of the society; and

(c) Not more than one nominee of the financing institution where the latter has provided finances to the society.

(B) Of the elected members one shall be a Harijan and one a woman. Where either a Harijan or a woman or both have not been elected, either or both of them, as the case may be, shall be coopted by the Managing Committee out of the members of the society. The number of the members of the Committee may accordingly increase by one or two, as the case may be.

(C) The members of the committee shall be so elected that, as far as possible, there is one member from every village falling within the area of operation of the Society and having at least 50 members,"

(11) In view of the said bye-laws, it could not be successfully argued on behalf of the petitioners that the nominees of the State Government or of the financing institution will not take part in cooption since they form part of the Managing Committee, as provided under bye-rule 34(A) reproduced above. The position in the State of Punjab in this behalf is different in view of Rule 80-A which provides that "Bar on voting by Government nominated unless on certain matter (Section 85(x) and Section 26(2)) the members nominated by the Government to the committees of a Cooperative Society under clause (a) of subsection (2) of Section 26 shall not vote in the election of office bearers of the Co-operative Society." Admittedly, there is no such rule as regards the State of Haryana. Faced with this situation, the learned counsel for the petitioners referred to sub-section (4) of Section 29 of the Act, as reproduced above to contend that notwithstanding anything contained in the bye-laws of a society, the Government has been given power to coopt one-third members belonging to the weaker section out of whom at least one such member shall belong to the Scheduled Caste. Thus, argued the learned counsel that since the said sub-section is overriding the bye-laws and, therefore, in view of that provision the bye-law 34A will also be deemed to have been overriden and the members thus nominated by the State Government will not be allowed to take part in the cooption. I do not find any merit in this contention nor the judgments referred to above in this behalf have any applicability on the facts of the present case. In Ram Kishan Hooda''s case (1981 P LJ 481) (supra) the cooption that was from the members of the weaker section of the Society u/s 26 of the Punjab Co-operative Societies Act, as applicable to the State of Haryana, it was in that context when it was observed by this. Court that "a reading of this sub-section, i.e. sub-section (5) of Section 26 of the Act makes it amply clear that for purposes of co-option", the Government figures nowhere and has no jurisdiction to make any co-option. In a given situation when the members of the committee fail to co-opt the members from the weaker sections of the society, the Registrar may exercise his authority in terms of second proviso noticed above. "In the present case, it is a co-option of a Harijan and a woman under the Bye-rules of the Society and has nothing to do with sub-section (4) of Section 29 of the Act which is equivalent to subsection (5) of S. 26 of the old Act.

(12) Moreover, there cannot be an absolute bar that the nominees of the State Government cannot take part in co-option. It will always depend upon the statute and the bye-laws under which the co-option is made.

(13) The result of the above discussion is that any nomination by the State Government, where it has subscribed to the share capital of a Co-operative Society or guarantee the principal and interest in respect of debentures issued by the society or guaranted the principal and interest in respect of loans and advances to the society or assisted the Society with loans and grants by less than one lakh rupees is violative of S. 29 of the Act and any such nomination was, therefore, wrong and illegal. Any co-option thus made by these nominated members of the Harijan and a woman will thus stand quashed and fresh cooption will be made in accordance with law. All the petitions stand disposed of accordingly with no order as to costs.

(14) Petition dismissed.

