(1989) 11 P&H CK 0048

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 863 of 1988

Malik Singh Kang and ors. — APPELLANT

Vs

State of Haryana and anr. — RESPONDENT

Date of Decision : 30-11-1989

Acts Referred:

Citation : (1990) PLJ 374 : (1990) 2 RRR 511

Hon'ble Judges : I.S.Tiwana, J and A.P.Chowdhri, J

Advocate : Mr. G.S. Sandhu, Advocate., Advocates for appearing Parties

Judgement

A.P. Chowdhri, J.

1. In this bunch of 26 Civil Writ Petition Nos. 61 of 1989, 1218, 1267, 1738, 2418, 2423, 2424, 2830, 2890, 3843, 4274, 4311, 4391 4585, 4836, 4849, 5769, 6049, 6051, 6701, 7934, 8224 of 1988,359, 5622 and 8303 of 1989 the challenge is to the vires of the Haryana Cooperative Societies (Amendment) Act, 1987 (Haryana Act No. 7 of 1988). The petitioners were elected to the managing committees of the various Cooperative Societies in the State of Haryana in the election held on different dates mostly during the years 1984 and 1985 or later. These elections were held under the provisions of the Haryana Cooperative Societies Act, 1984 before January 12, 1988 when the Amending Act of 1987 came into force.

2. The Haryana Legislature enacted the Haryana Cooperative Societies Amendment) Act, 1987 (Haryana Act No. 7 of 1988) (hereinafter referred to as `the Amending Act of 1987). By section 2 of the Amending Act subsection (4) of section 28 of the Haryana Cooperative Societies Act, 1984, section was amended so as to fix a period of three years as a term for the managing committee. The second proviso laid down that if term of a committee already constituted had not exceeded three years it shall cease to function on the completion of three years and where it had exceeded three years it shall cease to function on the commencement of the said Amending Act, 1987.

3. Section 33 of the Act was also amended. It relates to the maximum period for which an Administrator could be appointed in place of the managing committee. The Government was empowered to extend the initial period of one year upto four years but not more than a year at a time. Under the Principal Act the Administrator could be appointed for the initial six months by the Registrar Cooperative Societies and the said period was extendable by one term of six months by the Registrar.

4. In the return it is stated that the term of the managing committee has been reduced in respect of all Cooperative Societies in the State. With regard to the maximum period for which Administrator could be appointed, it was stated that the Registrar, Cooperative Societies was empowered to appoint an Administrator for six months in the first instance which is extendable by another six months. Further extension can be granted by the Government for a period of one year at a time upto a total period of four years. It was further stated the term of the managing committee had been reduced to three years so as to bring the same at par with the term prevailing throughout the country and (under) the Central Act except the State of Andhra Pradesh. The term had been reduced for better Administration of the Cooperative Societies and the amendment was not carried out with any ulterior motive.

5. In an additional affidavit it was stated by Shri Bhagwati Prasad, Registrar Cooperative Societies, Haryana, that there were about 11,000 Cooperative Societies in the State. After the Amending Act 1987 elections had taken place in about 7,000 Societies. Another 2000 societies were either defunct or under winding up and no elections were to be held therein. The date for election of the remaining Cooperative Societies is to be fixed on receipt of intimation from the Managers concerned that lists of voters had been finalised as per rules.

6. Some of these writ petitions, including CWP No. 863 of 1988, came up for hearing before me sitting singly. By order dated October 13, 1989, the writ petitions were referred to a larger Bench as the petitions involved important questions and were to affect a large number of persons throughout the State. This is how these writ petitions have been placed before us.

7. The first point urged by learned counsel for the petitioners is that the impugned Amending Act is beyond the legislative competence of the State Legislature. Entry 32 of List 11 of the VII Schedule of the Constitution lays down as under :

"32. Incorporation, regulation and winding up of corporations, other than those specified in List 1, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; cooperative societies".

8. It was contended that Cooperative Society is a Corporation as held in Daman Singh and others v. State of Punjab and others, AIR 1985 Supreme Court 973 : 1986 R.R.R. 560 and what was stated in the entry was expressly controlled by the opening words, namely, incorporation, regulation and winding up". It was

further contended that the impugned Act was outside the scope of incorporation, regulation and winding up" and, therefore, the same was not covered under Entry 32 of the State List.

9. We do not find any merit in this contention. The words "cooperative societies" occurring in the Entry are separated by a `semi colon'' from the portion which precedes it. These words have, therefore, to be read disjunctively from the remaining contents of Entry 32. Alternatively, the expression regulation used in the opening part of Entry 32 clearly covers matters related to management of societies, including the term of the managing body as also a provision for appointment of an Administrator in the event of the Managing Committee ceasing to exist. It is settled law that in interpreting the scope of entries in the Legislative Lists in the Schedule VII widest possible amplitude must be given to the words used and, each general word must be held to extend to ancillary and subsidiary matters which can fairly be said to be comprehended in it (See Chaturbhai M. Patel v. Union of India and others, AIR 1960 SC 424 and Waverly Jute Mill Co. Ltd. v. Raymon and Company, AIR 1963 SC 90). The contention that cooperative society is also a corporation as held by the Supreme Court in Daman Singh''s case (supra) does not advance the case of the petitioners. Whereas a cooperative society is a corporation, the converse is not true i.e. every corporation is not a cooperative society to other words, cooperative society and corporation are not identical and interchangeable expressions. The amendment relates to term of the Managing Committee and the maximum period for which the Administrator can be allowed to function under orders of the Registrar/State Government. These are evidently matters relating to regulation of the cooperative society and, therefore, even if the opening words of Entry 32 are taken to control the expression "cooperative societies" the impugned amendment falls within the four corners of Entry 32. The matter can be viewed from another angle. Entry 43 of List 1 of the VII Schedule, while dealing with incorporation, regulation and winding up of trading corporations expressly excludes cooperative societies. Though there is no similar exclusion in Entry 44 of List 11 what is included therein is a corporation with objects not confined to one State. In other words, where the objects of a cooperative society are confined to one State, the same does not fall under Entry 44 of List I, That is why the Parliament has enacted the MultiState Cooperative Societies Act 1984 (Central Act No. 51 of 1984). In regard to cooperative societies with objects confined to one State, the relevant Entry is Entry 32 of list 11 of the said Schedule.

10. The question of legislative competence of the State Legislature in the context of different State Cooperative Societies Act was raised in various States of India. It was held that the State Legislature was competent to legislate under Entry 32 of List 11 of the VII Schedule. (See (1968) 34 Cut LT 745 (DB), (197374)9 Coop LJ 109 (Andhra Pradesh), Sultan Singh v. Astt. Registrar Incharge Jhansi Division, Jhansi and others,. AIR 972 Allahabad, 159 (DB), Nagpur District Central Cooperative Bank Ltd. Nagpur and another v. Divisional Joint Registrar, Cooperative Societies, Nagpur and another, AIR 1961 Bombay 36. Sant Sadhu

Singh and others v. The State of Punjab and another, AIR 1970 Punjab & Haryana 528, 14. Puttappa v. State of Karnataka, AIR 1978 Karnataka 148 (FB). The Haryana Cooperative Societies Act, 1984, replaced the Punjab Cooperative Societies Act, 1961 (Act No. 25 of 1961). The aforesaid question of legislative competence of the State Legislature in enacting the Punjab Cooperative Societies Act, 1961 came up for consideration in Sant Sadhu Singh and others v. The State of Punjab and another, AIR 1970 Punjab & Haryana 528. A Division Bench of this Court held as under

".. But so far as the Cooperative Societies are concerned, they were taken out of the ambit of Entry No. 43 and put in Entry No. 32 List 11. The word regulation in Entry No. 43 is of a wide import and would include how a Cooperative Society is to work. In other words, it would include the constitution of a Cooperative Society and any matter relating to its constitution would naturally be the subject matter of legislation by the State Legislature".

The above mentioned decision was expressly approved by their Lordships of the Supreme Court in Virendra Pal Singh and others v. District Assistant Registrar, Cooperative Societies Etah and another, (1980)4 SCC 109. We do not think that the question deserves to be considered any further. We, therefore, reject this contention.

11. The next point urged by the learned counsel for the petitioners is that the impugned Act abridges the petitioners'' fundamental rights under Articles 14, 19(1)(c) and (g) and violates Article 3IA(1)(b) of the Constitution. According to the learned counsel, various societies could be dealt with arbitrarily and discriminated against in the matter of the period for which an administrator was allowed to function. The period could vary from a few days to four years depending upon the whim, caprice and political convenience of the party in power. No guidelines existed in the Act. Great stress was laid by the learned counsel on the fact that while the maximum period for which Administrator could be appointed under section 34 relating to supersession of a Committee for dereliction of duty, the outer limit was three years, the maximum period under section 33, as amended, was four years.

12. With regard to infraction of Article 19(1)(c) and (g) of the Constitution, it was argued that by imposing an Administrator on the society, the State virtually denied to the citizens the right to form association as well as right to practice any profession or carry on any trade, occupation or business.

13. A supportive argument urged by the learned counsel was that the cooperative society was essentially conceived as a democratic body and the members thereof had every right to manage their own affairs in accordance with cooperative principles which were well known. Our attention was drawn to The Collector Farming Society Ltd., and others v. State of Madhya Pradesh and others, AIR 1974 Madhya Pradesh 59 (Full Bench) in which the learned Judges traced the history of the Cooperative movement and inter alia highlighted its

democratic character.

14. Regarding contravention of Article 31A(1)(b) of the Constitution it was submitted that taking over of management of the society was neither in the public interest nor can the period of four years be considered to be a limited period.

15. The above submissions have an appealing simplicity. They, however, do not stand close scrutiny.

16. It may be made clear at the outset that there is no fundamental right outside the provisions of Chapter III (Articles 14 to 32) This is because we have a written Constitution defining the fundamental rights. Once this is kept in view, there is no difficulty in appreciating that the democratic spirit in forming the cooperative societies in general, however laudable, is not a fundamental right. The law in question cannot therefore, be declared invalid for the reason that it goes not against the democratic spirit or the cooperative principles. We are supported in this view by the law laid down in Smt. Indira Nehru Gandhi v. Raj Narain, AIR 1975 Supreme Court 2299, Their Lordships laid down in Indira Nehru Gandhi''s case (supra) that an ordinary law cannot be declared invalid on the ground that it goes against the vague concepts of democracy, justice, Political, economic and social, liberty of thought belief and expression or equality of status and opportunity or some invisible radiation from them (vide paras 348 and 349) it was also laid down that the doctrine of the "spirit" of the Constitution is a slippery slope. The Courts are not at liberty to declare an Act void, because, in their opinion, it is opposed to the spirit of democracy or republicanism supposed to pervade the Constitution but not expressed in words (vide para 35). In the same decision, their Lordships also laid down that legislative measures are not subject to the theory of basic features or basic structure or basic framework of the Act.

17. The question remains whether the provisions in question contravene any of the fundamental rights under Articles 14 and 19.

18. Subject to the first proviso to subsection (4) of section 28 the Amending Act applies to all cooperative societies in the State. The second proviso to subsection (4) further lays down a principle of general application namely, that the committee which had completed three years term provided in the amended law will cease to exist on the coming into force of the Amending Act of 1987. Those which had not yet completed three years would cease to exist on completion of three years.

19. With regard to the grievance that the State may continue an Administrator in one society, for a longer period than in the other, it may be stated that this does not furnish a ground for declaring the Act ultra vires. Firstly, it is settled law that once the policy is laid down by law. It cannot be held to be invalid merely on the ground that the discretion conferred in some cases may be exercised in a manner which, in fact, is discriminatory. In other words the mere possibility that

the discretionary power may be abused is no ground for invalidating the statute. If the administrative authority misuses the power by making an arbitrary selection without regard to the policy laid down by the Legislature, the administrative act will be struck down as discriminatory (See : In re., The Karala Education Bill, 1957, AIR 1989 Supreme Court 956) Secondly, the discretion has been given to the Registrar for the initial period of six months which is tendable by one term of six months and thereafter the State Government to extend the term upto four years. A safeguard provided is that the term cannot be extended by more than one year at a time. This enables the State Government to review the position every years. It is manifest that the Registrar, Cooperative Societies is one of the highest functionaries in the department and the State Government itself is a responsible body and discretion has thus not been left to a small or not sufficiently responsible functionary of the government. Incidently, the above thinking and trust is borne out by the facts stated in the additional affidavit dated 8111989 filed by the Registrar. Cooperative Societies, referred to in the earlier part of this judgment. It will be recalled that elections had been held in an overwhelimingly large number of the cooperative societies where they become due.

20. Coming to the alleged infringement of Article 19(1)(c) and (g) we are of the view that the contention is without merit. In Daman Singh''s case (supra) their Lordships of the Supreme Court observed that the cooperative societies from the very inception are governed by the statute. Said their Lordships, "They (Cooperative Societies) are created by statute, they are controlled by statute and so, there can be so objection to statutory interference with their composition on the ground of contravention of the individual right of freedom of association...."(vide, para 9 of the report). It was further observed, once a person becomes at member of a cooperative society, he loses his individuality qua the society and he has no independent rights except those given to him by the statute and the byelaws. He must act and speak through the society or rather, the society alone can act and speak for him qua rights or duties of the society as a body" (vide para 11 of the report) the right to be elected to managing committee is thus not a fundamental right. It stems from the provisions of the statute and the byelaws. The following observations in Sultan Singh v. Assistant Registrarincharge, Jhansi Division, Jhansi and others, AIR 1972 Allahabad 159 are very apposite :

"We cannot see how a citizen enjoys a fundamental right to participate in the affairs of a cooperative society. That is a right which belongs to him only under the rules of the society. If the rules prescribe that the right can belong only to the members of the society, strangers to the membership cannot complain. It is from the rules of the society that the status of membership arises and the right pertaining to such a status are enjoyed. There is no tifl in the nature of a fundamental right to such status and rights. If the rules are altered so that a particular class of membership is abolished the status and rights are destroyed and there being no fundamental right to that class of membership, no question of the impairment of a fundamental right arises when the class of membership is abolished".

In K. Nagraj and others v. State of Andhra Pradesh and another, AIR 1985 Supreme Court 551, the facts were that in January, 1983 Telugu Desam was swept to power in the State of Andhra Pradesh. On 821983 the Government decided to reduce the age of superannuation of all Government employees from 58 to 55 years. The action of the Government was challenged. One of the contentions raised before the Supreme Court was that by reducing the age of retirement to 55 years, the Government employees were deprived of their right to livelihood. Rejecting the contention their Lordships observed that if a rule of retirement can be deemed to deprive a person of his right to livelihood it will be impermissible to provide for an age of retirement at all. It was also observed that the rules of retirement do not take away the right of a person to his livelihood they limit his right to hold office to a stated number of years.

21. In a recent decision in M. Ranga Reddy v. State of Andhra Pradesh and another, AIR 1989 Andhra Pradesh 81 the learned Judges of a Division Bench after reviewing the case law summed up the legal position in para 20 of the report :

"From the above decisions, the principle that emerges is that while the right to form an association or a union is a fundamental right of a citizen, there is no fundamental right to form a coop. society under the Cooperative Societies Act. The formation of a cooperative society, its management, conduct of its affairs, and its winding up etc. are all matters governed by the relevant statute. If persons want to form a cooperative society, they have to do it only in accordance with the provisions of the relevant statute. Such statute can provide for classification of cosocieties, the conditions which they must observe in the conduct of their affairs, the control and supervision subject to which they should, operate, the manner in which their committees should be elected, and so on and so forth. Such a statute can always providefor amalgamation, merger, liquidation, and reorganisation of societies. It would not be reasonable to deny to the Legislature the right to bring about structural changes, or to effect structural reorganisation of societies in the interest of the cooperative societies themselves, their members and cooperative movement as a whole. It cannot be argued that once a cooperative society is registered, its existence can never be put an end to in any circumstances As stated above, since the registration of a cooperative society, or the right to become a member of the cooperative society is not a right within the meaning of Article 19(1)(c) of the Constitution, the taking away of such right cannot also be treated as infringement of the said right".

The case reported as State of Rajasthan and others v. Union of India, AIR 1977 Supreme Court 1361, related to threatened dissolution of Legislative Assemblies in six States of India in the year 1971. One of the contentions raised in the Supreme Court was that the dissolution of the State Assembly would deprive the duly elected members of their right to draw their salary and allowances.

Rejecting the contention it was held that threatened dissolution of the Assembly did not involve any, infraction of fundamental rights guaranteed to the petitioners. It was observed that the right of the petitioners as members of the Legislative Assembly was not a fundamental right as envisaged in Part III of the Constitution. It was further observed that at the most the right to receive allowance as members of the Assembly was merely a legal right consequent upon the petitioner''s election as members of the Assembly. It was not a right which flowed from the Constitution. There being no infraction of any fundamental right, the petitioners cannot be allowed to take recourse to Article 32.

22. From what has been stated above, we have no difficulty in concluding that reduction in the term of the managing committee by the Act in question does not amount to infraction of any fundamental right. In fact, right to be a member of the Cooperative Society, to be elected to the managing committee in accordance with the byelaws and the right to hold office for a certain term are clearly governed by the provisions of the statute. The legislature is competent to amend the relevant provisions and the amendment reducing the term of the managing committee does not abridge any fundamental right of the petitioners.

23. It was next argued by the learned counsel that as a result of the election the petitioners acquired a vested right to hold the office for a term of five years in accordance with the law then in force. The present amendment necessarily had a retrospective effect in that, the present Act would apply to the committees in which election had been held according to law prior to its amendment. This, according to the learned counsel could not be permitted. Reliance has been placed on State of Gujarat and another v. Raman Lal Keshav Lal Soni and other, AIR 1984 Supreme Court 161 and State of Andhra Pradesh and others v. Guntaka Toddy Tappers Cooperative Society and others, (1985) 3 Supreme Court Cases 360. In State of Gujarat and another v. Raman Lal Keshav Lal Soni''s case (supra), under the provisions of the Gujarat Panchayats Act, 1961 the employees of the Municipal Committees were allocated to the Panchayat Services, in the hierarchy of panchayats from village to the district level. By an amendment brought about in 1978 it was declared that whereas employees who were allocated to the Panchayat''s service from one source were Government servants, those allocated from another source, namely, the Municipal Committees were not. The amendment was given retrospective effect. In paragraph 51 of the report it was held that the above amendment contravened provisions of Article 311 as also Article 14 of the Constitution. It was in the peculiar facts observed in para 52 as under :

"A Legislature cannot legislate today with reference to a situation that obtained twenty years ago and ignore the march of events and the constitutional rights accrued in the course of the twenty years. That would be most arbitrary, unreasonable and a negation of history. Today''s equals cannot be made unequal by saying that they were unequal twenty years ago and we will restore that position by making a law today and making it retrospective. Constitutional rights, constitutional obligations and constitutional consequences cannot be tampered with that way. A law which if made today would be plainly invalid as offending constitutional provisions in the context of the existing situation cannot become valid by being made retrospective."

In the same paragraph their Lordships laid down, "the legislature is un doubtedly competent to legislate with retrospective effect to take away or impair any vested rightacquired under existing laws but since laws are made under a written Constitution and have to conform to the `do'' and dont''s of the Constitution, neither prospective nor retrospective laws can be made so as to contravene Fundamental Rights".

24. The above authority, therefore, does not support the proposition that the Legislature cannot take away a so called vested right. In State of Andhra Pradesh and others v. Guntakal Today Tapper" Cooperative Society''s case (supra), it was made very clear towards the end of paragraph 2 that no challenge was available against the concerned Andhra Pradesh Act and the Rules made thereunder. The whole case turned on terms of the contract and the policy of the State Govt. which was changed from time to time. In the facts and circumstances noted in paragraphs 4 and 5 of the decision, the Supreme Court held that if the State Government wanted to bring a change in the term of the lease, effect should have been given only after the contracts with the respondent Society had come to an end by efflux of time. It was thus on the basis of the contract and peculiar facts and circumstances of the case that the above order was made. No law of general application was laid down. The contention of the learned counsel a, therefore untenable and is rejected.

25. For the proposition that conditions necessary for the protection under Article 31A(1)(b) had not been fulfilled, reliance, is placed by the learned counsel on Smt. Damyanti Naranga v. The Union of India and others, AIR 1971 Supreme Court 966 and Municipal Committee, Amritsar and others v. The State of Punjab and another, AIR 1970 Supreme Court 2182. Before dealing with these authorities it may be pointed out that the question of seeking protection under Article 31A(1)(b) would arise only if the Act in question contravened the provisions of Articles 14 and 19. In the discussion in the earlier part of this judgment our conclusion is that no infraction of Articles 14 or 19 is involved in this case. It follows that there is so question of seeking protection under the provisions of Article 31A (1)(b). With regard to Damyanti''s case (supra), the Act under examination with regard to its constitutional validity was the Hindi Sahitya Sammelan Act, 1962. It was held that the Act deprived the members of the governing body of the original society of the property which continued to vest in the original society inspite of the passing of the Act. This amounted to total deprivation of property instead of regulating the management of the affairs of the Society or its properties. It was, therefore, held that the Act could not be justified as reasonable restriction in public interest. In Municipal Committee, Amritsar v. The State of Punjab and another''s case (supra) it was hold that the

impugned amendment vested in the State not only the management of the schools taken over but also all interests in the lands, buildings etc., of the school along with the movable properties pertaining thereto which shall be deemed to have been transferred to the State. There was no provision whatsoever for an automatic retransfer of those properties after a lapse of period of 10 years for which the taking over of the schools was made effective. It was held that the aforesaid action was nothing short of compulsory acquisition within the meaning of Article 111 of the Constitution and in the absence of any provision for payment or any compensation the amendment was held to be ultra vires the Constitution. Both these authorities are clearly distinguishable from the present case on the ground that the appointment of an administrator for a limited period does not amount to vesting of the property of the Cooperative Societies in the State Government and the administrator is required to function as a managing committee and is bound by the byelaws of the Society and the provisions of the Act and the rules made thereunder. It bears repetition that section 25 of the Principal Act vests the final authority in the general body comprised of all the members. The appointment of the administrator does not take away the aforesaid final authority which continues to vest in the general body.

26. The learned counsel lastly contended that the Amendment Act was bad as it suffered from vice of excessive delegation. What the Amending Act has done is to alter the term of the managing committee of the cooperative societies and the period for which the appointment of the administrator can be extended. Both these provisions have been existing in the Act as also in the Punjab Cooperative Societies Act, 1961, which the present Act has replaced. The fact that such a provision stood the test of time shows that either no challenge ever made on the ground of excessive delegation and if a challenge was made at any stage the same was repelled. The learned counsel relied on Umrao Singh v. State of Punjab and others, 1969 Current Law Journal 563. The challenge in that case was to Section 77 of the Punjab Cooperative Societies Act, 1961. That section empowered the State Government to exempt any cooperative society from any provisions of the Act. It also empowered the State Government to direct that such provisions shall apply to specified societies with such modifications as may be specified in the order. The petitioners cannot draw any aid from the above authority which related to a provision which is not even remotely connected with sections 28 and 33 which have been amended by the Act in question. A Full Bench of Madhya Pradesh High Court in The Collective Farming Societies cast (supra) examined the vires of section 91 of the Madhya Pradesh Cooperative Societies Act, 1961 who said provision was analogous to Section 77 of the Punjab Act which came up for consideration in the aforesaid case of Umrao Singh (supra). The learned Judges after reviewing the caselaw deduced certain propositions of law. Propositions No. 9 and 10 are relevant and read as under :

"(9) Where unguided discretion conferred by the statute on the executive the legislation need not be struck down, the Court should examine the principles and policy of the statute. Whether guidance has been given may depend upon the consideration of the provisions of the particular Act with which the Court has to deal including its preamble.

(10) If the delegated authority makes an order in contravention of the standards laid down in the section or contrary to the legislative policy found in the provisions of the Act, as the case may be, the order of the delegate must be struck down, but not the section. The question is justiciable."

27. We have examined the relevant provisions of the Act as a whole and we find no case for striking down the provisions of the Amending Act on the ground of excessive delegation.

28. In the result, for the forgoing reasons, we find no merit in the writ petitions. They are dismissed.

Petitions dismissed.

