
(1993) 12 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 3620 of 1993

Mithu Singh @ Iqbal Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 08-12-1993

Acts Referred:

Citation : (1994) 108 PLR 619

Hon'ble Judges : S.K. Jain, J;G.R. Majithia, J

Bench : Division Bench

Advocate : H.S. Mattewal and Sukhbir Singh, for the Appellant; G.K. Chatrath, General, G.S. Cheema, for Respondent Nos. 1 and 2, J.N. Kaushal and S. Bedi, for the Respondent Nos. 3 and 4, for the Respondent

Judgement

G.R. Majithia, J.—This judgment disposes of Civil Writ Petitions No. 3620 and 5265 of 1993 and 6780 and 7360 of 1992.

2. Civil Writ petitions No. 7560 and 6780 of 1992 are directed against the appellate order dated January 31, 1992, passed by the Commissioner, Appeals, Jalandhar Division and Co-operative Department, Punjab (exercising the powers of the State Government under the Punjab Co-operative Societies Act, 1961, affirming on appeal the order of the Registrar, Co-operative Societies, Punjab, Chandigarh contained in Endst. No. Credit CA/271/1495-97 and Endst. No. Credit-CA/271/1489/91, both dated August 19, 1991 ceasing Surinder Singh and Harminder Singh, petitioners, from the membership of the Board of Directors of the Punjab State Co-operative Agricultural Development Bank Limited, Chandigarh (for short, the State Bank) from the date they incurred the disqualification in the Primary Banks they represented i.e. from the date the Managing Committees of the respective Primary Banks ceased to exist.

3. In Civil Writ Petition No. 3620 of 1992, Mithu Singh alias Iqbal Singh (hereinafter Mithu Singh), petitioner, has impugned the communication contained in letter No. 13840/SADB, dated March 31, 1993, addressed to him by the Managing Director of the State Bank informing him that as he was not a member

of the Board of Directors of the State Bank, he should surrender all the facilities available to him as Chairman President.

4. In Civil Writ Petition No. 5265 of 1993, Sarvshri Surinder Singh, Harminder Singh, Lal Singh, Satbir Singh and Sukhdarshan Singh Brar, all Directors of the State Bank and Shri Mithu Singh, President/Chairman of the State Bank, have challenged the validity of the Punjab government's order dated March 19, 1993, issued by the Secretary to Government, Punjab, Co-operation Department, Chandigarh whereby Shri B.S. Jatana, respondent No. 2 was appointed as the Managing Director of the State Bank.

5. The Punjab Co-operative Societies Act, 1961 (for short, the Act), was enacted by the Legislature of the State of Punjab consistent with our national policy to promote the organisation and growth of co-operative societies in various fields of economic activities. "Co-operative Society" means a society registered or deemed to be registered under the Act. Final authority in a co-operative society vests in the general body of the members provided that where the bye-laws of a co-operative society, provide for constitution of a smaller body consisting of members of the co-operative society, elected or selected in accordance with the bye-laws, the smaller body exercises such powers of the general body as may be prescribed or as may be specified in the bye-laws of the Co-operative Society. The governing body of a co-operative society invariably termed as a committee manages the affairs of the society. Section 26 of the Act envisages that the members of the committee of a co-operative society shall be elected in the manner prescribed Section 26 (1-B) says that the term of office of a committee shall be three years. The period of three years is to be reckoned from the date the committee enters into office. The Committee will be deemed to have entered into the office on the date it positions itself in the office. Section 85 of the Act empowers the State Government to make rules for any Co-operative Society or class of such societies to carry out the purposes of the Act. Clause (iv) of Sub-section (2) of Section 85 of the Act says that the State Government can frame the rules with respect to matters in respect of which a society may or shall make bye-laws and for the procedure to be followed in making, altering and abrogating bye-laws and the conditions to be satisfied prior to such making alteration or abrogation. As provided u/s 85, rules were framed by the State Government known as the Punjab Co-operative Societies Rules, 1963 (for short, the Rules), Rule 8 of the Rules provides that a co-operative society shall make bye-laws in respect of the following matters :-

- "(a) name and address of the co-operative society;
- (b) area of operation;
- (c) the objects for which the co-operative society is established;
- (d) the manner in which the funds may be raised;
- (e) the qualification for membership and the terms of admission of members;

- (f) the nature and extent of the liability of the members;
- (g) withdrawal and expulsion of members, and the payment, if any, to be made to such members;
- (h) transfer of shares on interest of the members;
- (i) general meeting and the procedure and powers of such meeting;
- (j) appointment, suspension and removal of the officers of the cooperative society and members of the committee;
- (k) constitution of the committee and procedure of holding its meetings;
- (l) powers and duties of the committee and the officers of the co-operative society; and
- (m) disposal of profits."

Rule 2(g) defines "model bye-laws", which means a set of bye-laws approved and proposed by the Registrar, Co-operative Societies, Punjab or general adoption by a class of co-operative societies. Section 15-A of the Act places restrictions on individuals in becoming members of certain co-operative societies. Explanation to Section 15-A postulates that for the purpose of this section, Sections 26, 26-B and 84-A of the Act, primary society, central society and apex societies have been defined as under :-

- (a) "primary society" means a co-operative society whose membership consists exclusively of individuals;
- (b) "central society" means a co-operative society whose membership includes primary societies;
- (c) "apex society" means a co-operative society whose membership includes central societies.

6. Primary Agricultural Development Bank (for short, the PADB) is a primary society as envisaged u/s 15-A of the Act. The object of the PADB is to promote the economic interest of its members and more particularly, to provide facilities of long term loans to its "A" class members on the security of immovable property for one or more of the following purposes :-

- (i) Redemption of mortgages on ordinary on agricultural land;
- (ii) Purchase of land for cultivation;
- (iii) Construction and repair of ordinary walls and tubewells;
- (iv) Installation of pumps and other water lifting appliance;
- (v) Construction of bunds;
- (vi) Fencing of agricultural lands against wild animals;

(vii) Raising of fruit gardens;

(viii) Reclamation of banjar land;

(ix) Purchase or repair of tractor, its allied implements and other agricultural implements such as chaff cutter, cane crushers, winnowing machine, rice husking equipment etc. It would not include implements such as ordinary plough, wooden carts, etc.;

(xi) Such other purposes relating to improvement of land and methods of cultivation as may be approved by the Board from time to time.;

(xii) Liquidation of prior debts."

The management of PADB vests in a committee. The committee consists of eight members constituted in the following manner :-

(i) Six Directors to be elected out of individuals and representatives of the society members by the general body;

(ii) A nominee of the State Bank; and

(iii) A nominee of the Registrar, Co-operative Societies, Punjab. .

7. As per Bye-law 28 of the Bye-laws of the Primary Co-operative Agricultural Development Bank (for short the PADB Bye-laws), the President and the Vice-President of the Committee are elected by the members of the Committee out of themselves. The Committee also appoints/ selects/elects a member to represent the PADB in the meeting of the Managing Committee of General Body of the another co-operative institution.

8. The State Bank is an apex society. It has framed its own bye-laws. The management of the State Bank vests in its Board. Bye-law 4(a) defines the "Board" as the Board of Directors of the State Bank. The Board or the State Board is constituted under Bye-law 29 of the Bye-laws, which reads as under :-

"29. The Board or the State Board shall be constituted in the following manner :-

(i) A nominee of the State Co-operative Bank;

(ii) Not more than three officials to be nominated by State Government as long as State Government is a shareholder;

(iii) Registrar or his nominee;

(iv) One-Director from each District to be elected by General Body, provided that the Directors who were elected under the provisions of old Bye-law 29(iv) should continue to function for unexpired period of their term."

Bye-law 30(b) says that a person shall be ineligible for election to the Board of the State Bank if he does not represent a member Primary Agricultural Development Bank.

9. As per the provisions of the Bye-laws, the Administrator of the State Bank divided the State of Punjab into twelve zones for the purpose of election of the members of the Board of the State Bank subject to approval of the Registrar, Co-operative Societies, Punjab as required u/s 26(1-A) of the Act. These zones are as under:-

-----				Zone
Name of	Name of	PADB's/other	Members	No. Zone falling in the Zone.
-----				1 2 3 1.
Patiala	Patiala, Nabha, Rajpura, Samana, Bassi Pathana at Sirhind, Punjab State. Electricity Board, Dera Bassi, Dudan Sadar at Devigarh.	2.	Sangrur	
Sangrur	Barnala, Malerkotla, Sunam, Lehra Ganga and Dhuri.	3.	Bhatinda	
Bhatinda	Mansa, Rampura Pul, Talwandi Sabo.	4.	Faridkot	
Faridkot	Faridkot, Moga, Muktsar, Malout.	5.	Ferozepur	
Ferozepur	Ferozepur, Abohar, Fazilka, Zira and Gur Har Sahai	6.	Ludhiana	
Ludhiana	Ludhiana, Doraha, Jagraon, Samrala and Khanna.	7.	Ropar	
Ropar	(Chandigarh at Ropar), Kharar, Punjab State Tubewell Corporation.	8.	Hoshiarpur	
Hoshiarpur	Hoshiarpur, Balachaur, Dasuya, Garhshankar and Mukerian.	9.	Gurdaspur	
Gurdaspur	Gurdaspur, Batala, Pathankot.	10.	Jalandhar	
Jalandhar	Jalandhar, Phillaur at Goraya, Nakodar, Nawanshahar.	11.	Amritsar	
Amritsar	Amritsar, Ajnala.	12.	Kapurthala	
Kapurthala	Kapurthala, Phagwara, Sultanpur, Bholath. The Registrar, Co-operative Societies, Punjab Chandigarh vide its communication contained in Memo No. Stores/Inspector/Election/ PSCADB/5732, dated October 10, 1990 addressed to the Managing Director of the State Bank, conveyed the approval to the carving of the aforementioned zones.			

10. The PADB's falling within a zone collectively elect a Director for the Board of the State Bank. Shri Surinder Singh (petitioner in Civil Writ Petition No. 7560 of 1992) was nominated by the Managing Committee of the Ludhiana PADB vide Resolution dated December 3, 1990 to participate in the election of the Board of the State Bank. He contested the election to the State Board from zone No. 6 under the authority of the Managing Committee of the Ludhiana PADB. Shri Harmohinder Singh (petitioner in C.W.P. No. 6780 of 1992) was nominated by the Managing Committee of Bassi Pathana PADB, Sirhind, vide Resolution No. 1 dated December 3, 1990, to participate in the election of the Board of the State Bank. Shri Mithu Singh (petitioner in C.W.P. No. 3620 of 1993) was nominated by the Managing Committee of the Talwandi Sabo PADB vide Resolution No. 2 dated December 1, 1990 to represent it in the election of the Board of the State Bank.

11. On December 11, 1990 the following six nominees of the PADB's were elected unopposed as Directors of the Board of State Bank from Zones No. 2,3,4,7,8 and 12:-

-----				Sr.
Zone	Name of the	Name of the	No. No. Zone PADB elected nominee	1 2
3	4	5	-----	
1.	2 Sangrur	Malerkotla Primary Agri.	S.Lal Singh S/o Dev. Bank Ltd.	S. Mohan Singh
2.	3 Bhatinda	Talwandi Sabo Co-op.	S. Mithu Singh	Primary Agri. Dev.

Bank alias Iqbal Singh Ltd. S/o S.ChandSingh. 3. 4 Faridkot Muktsar Co-op. Primary S. Sukhdarshan Agri. Dev. Bank Ltd. S/o Sh. Narain Singh. 4. 7 Ropar Chandigarh Primary S. Sarabjit Singh Agri. Bank Ltd. Ropar S/o Wasawa Singh 5. 8 Hoshiarpur Garhshankar Co-op. S. Baldev Singh Primary Dev. Bank Ltd. S/o S. Partap Singh 6. 12 Kapurthala Phagwara Co-op. Primary S. Satbir Singh Agri. Dev. Bank Ltd. S/o S. Gian Singh. 11A. Sarvshri Surinder Singh, Harmohinder Singh and Mithu Singh, petitioners, were elected as Directors of the Board of the State Bank from Zone No. 6 (Ludhiana), Zone No. 1 (Patiala) and Zone No. 3 (Bhatinda) respectively on December 17, 1990. Election from Zones No. 5, 9, 10 and 11 could not take place for want of eligible candidates.

12. The terms of the Committees of Bassi Pathana PADB at Sirhind, Talwandi Sabo PADB and Ludhiana PADB expired on April 2, 1991, January 14, 1991 and January 24, 1991 respectively. On the expiry of the terms of the committees of the aforementioned three PADB's falling in Zones No. 1, 3 and 6 respectively, the petitioners in C.W.P. No. 6780 of 1992, C.W.P. No. 3260 of 1993 and C.W.P. No. 7560 of 1992 were no more committee members and they lost their qualification to represent these on the Board of the State Bank. The Managing Committee of a PADB can elect one of its members to represent it in the election of the Directors of the State Board during the continuance of its terms. After the expiry of the terms of the Managing Committee of the Bassi Pathana PADB, Talwandi Sabo PADB and Ludhiana PADB, the petitioners ceased to be their representatives as is provided under Bye-law 32(iv) of the PADB By-laws. Bye-law 33(g) of the State Bank Bye-laws says that "an elected member of the Board shall cease to hold office if he ceases to be a committee member of the Primary Land Mortgage Bank he represents." Sarvshri Surinder Singh, Harmohinder Singh and Mithu Singh, petitioners, were not representing the managing committees of the aforementioned PADB's which nominated them after the expiry of the terms of the committees on April 2, 1991, January 14, 1991 and January 24, 1991 and thus they ceased to be the elected members of the State Board as per Bye-law 33(g) of the State Bank Bye-laws.

13. The State Bank vide letter No. 770/SDB, dated April 29, 1992, requested the Registrar, Co-operative Societies, Punjab Chandigarh to order election to fill eight interim vacancies of the Board of Directors of the State Bank. The letter reads thus :-

"Subject:- Election to fill interim vacancies of the Board of Directors of the Bank.

*** ** 2. According to the provisions of Bye-law No. 29(iv) one Director from each District (is) to be elected by General Body. An interim vacancy shall be filled by re-election and hold office for the remaining period of the tenure of the Board as per the provisions of the Bye-law No. 34.

3. As already mentioned, there are 8 districts where interim vacancies occurred. The list of the members who are members of this Bank in the respective Districts will elect one Director from each District. Accordingly zonal List is drawn District-

wise in accordance with the provision of the Bye-laws under provisions of the Appendix "C" of the Punjab Co-operative Societies Rules, 1963. The copy of the list is enclosed. You are requested to approve the zonal list so that the election programme may be drawn accordingly. Copy of the Bye-laws of the Punjab State Co-operative Agricultural Development Bank is also enclosed for ready reference."

The election was to take place from Districts Jalandhar, Hoshiarpur, Gurdaspur, Amritsar, Kapurthala, Ludhiana, Ferozepur and Patiala.

14. The Registrar, Co-operative Societies, Punjab, Chandigarh, vide his order issued under Endst. No. Election Asst/Stores/SADB/2775-87, dated June 11, 1992, stayed the election from Patiala Zone, which is represented by Shri Harmohinder Singh (petitioner in CWP No. 6780 of 1992). The order reads thus:-

"Shri Harmohinder Singh Director of the Bassi Pathana Primary Co-operative Agricultural Development Bank Ltd. Sirhind, who was representing Patiala Zone in the Punjab State Co-operative Agricultural Development Bank Ltd., Chandigarh was ceased from the membership of the Board of Directors of the S.A.D.B. Chandigarh by The Registrar, Co-operative Societies, Punjab, Chandigarh

Now Shri Harmohinder Singh Director has filed a Civil Writ Petition No. 6780 of 1992 in the Hon"ble High Court against the orders of the cessation from the membership of the Board of Directors of the S.A.D.B. Chandigarh and has got stay orders from the Hon"ble High Court. Keeping in view the orders passed by the Hon"ble High Court, election from Patiala Zone is hereby stayed."

Similarly, the Registrar stayed the election from Ludhiana Zone vide orders contained in Endst. No. election Asst/Stores/SADB/2815-18, dated June 16, 1992, in view of the ad interim order passed in C.W.P. No. 7560 of 1992, The order of the Registrar, Co-operative Societies, Punjab, reads thus:-

"Shri Surinder Singh, Director of the Ludhiana Primary Co-operative Agricultural Development Bank Ltd, who was representing Ludhiana Zone in the Punjab State Co-operative Agricultural Development Bank Ltd., Chandigarh was ceased from the membership of the Board of Directors of the S.A.D.B, Chandigarh by the Registrar, Co-operative Societies, Punjab, Chandigarh.

Now Shri Surinder Singh, Director has filed a Civil Writ Petition No. 7560 of 1992 in the Hon"ble High Court against the orders of cessation from the membership of the Board of Directors of the S.A.D.B. Chandigarh and has got stay orders from the Hon"ble High Court. The Hon"ble High Court has passed the following orders:-

"Notice of motion to the respondents for 15th July, 1992. Meanwhile operation of the order Annexure P.1 and P.2 are directed to be stayed. To be hear along with C.W.P. No. 6780 of 1992."

Please comply with the orders passed by the Hon"ble High Court strictly."

15. Elections to the Board of Directors of the State Bank from Districts

Hoshiarpur, Gurdaspur, Kapurthala and Ferozepur were held on June 19, 1992 and Sarvshri Baldev Singh, Ragbunath Sahai Puri, Satbir Singh and Om Parkash Panjawa were elected from the aforesaid zones respectively.

16. A vacancy of a Director to the State Board from Zone No. 3 (Bhatinda) had occurred in the same manner as occurred in other zones. The State Bank for inexplicable reasons did not intimate the Registrar, Co-operative Societies, Punjab, that vacancy from Zone No. 3 (Bhatinda) had also to be filled. Vacancy from Zone No.3 was to be filled in the same manner as it was to be filled from other eight zones. Mithu Singh (petitioner in C.W.P No. 3120 of 1993) represented this zone. He was elected President of the State Board on April 2, 1991 vide Resolution No. 1 of even date. It appears he manoeuvred with the officers of the State Bank and they did not inform the Registrar, Co-operative Societies, Punjab that vacancy of a Director of the State Board from Zone No. 3 (Bhatinda) had to be filled and re-election should be ordered. The term of the Managing Committee of the Talwandi Sabo PADB, which had nominated Shri Mithu Singh, petitioner, to represent it in the election of the Board of Directors of the State Bank had expired on January 14, 1991, and on the expiry of the term of the Managing Committee, Shri Mithu Singh ceased to represent it. Talwandi Sabo PADB falls in Zone No. 3 (Bhatinda). Vacancy to the State Board from Zone No. 3 had occurred and it had to be filled, but was not allowed to be filled.

17. The facts narrated above have been taken from the pleadings of the parties and the records produced by the counsel for the State Bank.

18. Now the stage is set to examine the submissions made by the learned counsel for the petitioner in each case. Shri H.S. Mattewal, Senior Advocate, representing S. Mithu Singh (petitioner in C.W.P. No. 3620 of 1993), submitted that the petitioner was nominated by the Managing Committee of Talwandi Sabo PADB vide Resolution dated March 13, 1991, to represent it on the Board of Directors of the State Bank and by virtue of this authorization he is entitled to represent the Talwandi Sabo PADB on the Board of Directors of the State Bank till the expiry of the term of the State Board. He further submitted that the Bye-laws have no statutory force and that the Managing Director of the State Bank could not cease him from the office of Directors of the State Board.

19. The submissions are devoid of merit. The Board of Directors of the State Bank is constituted under Bye-law 29 of the State Bank Bye-laws. Clause (iv) of Bye-law 29 says that one Director from each District has to be elected by the General Body. The General Body obviously has a reference to the Societies, namely, Primary Agricultural Development Banks in the District/Zone. The General Bodies of the PADBs elect the committees which are popularly known as the Managing Committees. The Managing Committees of the PADBs in the District elect their representatives for participating in the elections to the Board of Directors of the State Bank those representatives of the Managing Committee of the PADBs within the District/Zone collectively elect a Director to the Board of Directors of the State Bank.

20. In District Bhatinda (Zone No. 3), there are following PADB:-

- (1) The Talwandi Sabo Co-operative Agricultural Development Bank Limited, Talwandi Sabo.
- (2) The Bhatinda Co-operative Agricultural Development Bank Limited, Bhatinda.
- (3) The Mansa Co-operative Agricultural Development Bank Limited, Mansa.
- (4) The Rampura Phul Co-operative Agricultural Development Bank Limited, Rampura Phul.

The petitioner was nominated by the Managing Committee of the Talwandi Sabo PADB to represent it on the Board of Directors of the State Bank. The Managing Committees PADB of Bhatinda, Mansa, Talwandi Sabo and Rampura Phul collectively had to elect a Director of the State Bank it is in this context that the State Bank maintains that the vacancy from zone No3 (Bhatinda) was not filled.

21. Bye-laws 29 and 30 of the State Bank Bye-laws have to be read harmoniously. A person must have the qualifications mentioned in Bye-law No. 30 to contest for the office of a Director in the Board of the State Bank to be constituted under Bye-law No. 29. Under Clause (iv) of Bye-law No. 29, a representative of a PADB cannot be elected as a Director of the State Board, The State is divided into zones and each district is carved out as a zone. The zones are carved out by the State Bank and approved by the Registrar, Co-operative Societies, Punjab, for holding election to the Board of Directors of the State Bank. All the PADB in the Zone collectively elect a Director to the State Board to be constituted under Bye-law No.29. Under Bye-law No. 29(iv) a representative of the PADB cannot be elected as a Director of the Board of the State Bank.

22. The petitioner is claiming benefit under the Bye-laws. He is claiming to have been elected as a Director of the Board of the State Bank under bye-law 30(h). He says that he never ceased to represent the Talwandi Sabo PADB and as such he never incurred disqualification to continue as a member of the Board of Directors of the State Bank. He is taking the benefit under the Bye-laws and he cannot say that the Bye-laws have no, force. A person who is claiming benefit under the Bye-laws cannot be permitted to say that the Bye-laws have no statutory force.

23. As regards the third submission, the Managing Director of the State Bank has not issued an order of cessation. The order only says that the term of the Managing Committee of the Talwandi Sabo PADB had expired on January 14, 1991 and Zone No. 3 (Bhatinda), in which the Talwandi Sabo PADB falls, did not elect a Director of the State. Board and the zone is unrepresented, all the facilities enjoyed by him should be surrendered forthwith. Apart from this, the term of the Managing Committee of the Talwandi Sabo PADB expired on January 14, 1991. The petitioner was re-elected as a member of the Managing Committee of the Talwandi Sabo PADB on January 14, 1991, but he was authorised by the Managing Committee to represent it in the election of the

Board of Directors of the State Bank vide resolution dated March 13, 1991. From January 14, 1991 to March 13, 1991, there was no authorisation by the Managing Committee of the Talwandi Sabo PADB to the petitioner to represent it in the election of any other society, viz. central society or the apex society. Thus, the petitioner was not representing the Talwandi Sabo PADB from January 14, 1991 to March 13, 1991. This factual position has not been controverted by his counsel. His counsel does not dispute that from each District/Zone, a Director has to be elected to the Board of the State Bank. The petitioner knew that after the terms of the Managing Committee of the Talwandi Sabo PADS had expired on January 14, 1991, he ceased to represent it and from Zone No. 3 (Bhatinda) no fresh election took place and he was never re-elected from that Zone. Despite this, he continued in the office as a Director and as President of the State Bank enjoying all the facilities and amenities, to which he was legally not entitled to. He, thus, misused his official position.

24. The petitioners in C.W.P. No. 7560 of 1992 and 6780 of ,1992 prevented the holding of fresh election to the Board of Directors of the State Bank by obtaining, stay orders from this Court. Election to the Board of Directors; of the State Board from the zones represented by the petitioner in CWP Nos. 7560 and 6780 of 1992 were scheduled for June 19, 1992. They prevented the holding of the election by interdicting the authorities. They knew that they had lost the basic qualification to contest the election to the Board of Directors of the State Bank from their respective zones on the expiry of the term of the Managing Committees of the PADB's which had selected them for participation in the election to the State Board. They successfully thwarted the attempt by the State Bank to follow the democratic process of electing the members of the State Board.

25. The petitioners in C.W.P. No. 5265 of 1993 have challenged the appointment of Shri B.S. Jatana, I.A.S. as the Managing Director of the State Bank. No argument was addressed at the Bar by the counsel as to how the appointment of Shri Jatana as a Managing Director of State Bank was invalid. His appointment was made by the State Government under the Proviso (b) to Section 26(2)(a) of the Act. Sub-section (2) of Section 26 of the Act reads thus:-

"26. Election and nomination of members of committees. -

(1) ** *** **

(2) Notwithstanding anything contained in Sub-section (1),-

(a) where the government have subscribed to the share capital of a Co-operative society or has guaranteed the repayment of the principal and payment of interest on debentures issued for loans raised by a Co-operative Society, the Government or any person authorised by it in this behalf shall have the right to nominate on the committee such number of persons, not exceeding three or one-third of the total number of members thereof, whichever is less, as the Government may determine:

Provided that where the Government have subscribed to the share capital of a Co-operative Society to the extent of twenty lacs rupees or more, the Government may, notwithstanding anything contained in the bye-laws of the society:-

(a) appoint one of the members nominated in the aforesaid manner as Chairman of the Committee of such society; or

(b) nominate another member in addition to those nominated in the aforesaid manner and appoint him as Managing Director."

Proviso (b) to Clause (a) of Sub-section (2) of Section 26 of the Act says that if the Government have subscribed to the share capital of a Co-operative Society to the extent of twenty lacs rupees or more, notwithstanding anything contained to the contrary under the bye-laws of the Society, the Government can nominate another member in addition to those nominated under Clause (a) of Section 26(2) and appoint him as Managing Director of the Society. The statement of Shri Gurjeet Singh, Manager (Accounts) of the State Bank was recorded in Court on August 23, 1993 in C.W.P. No. 3620 of 1993. He stated that the State Government has still got share capital to the tune of Rs. 21.40 lacs with the apex Bank (Punjab State Co-operative Agricultural Development Bank, Chandigarh). Shri Mithu Singh (petitioner in C.W.P. No. 3620 of 1993), who was the President of the State Bank put a note on the file that the share capital of the State Government be returned to it, but his action was never approved by the Board of Directors. His intentions are apparent that he did not want the State Government's control over the State Bank. He wanted to manage the affairs of the Bank as per his own sweet will without any hindrance from other Government authorities. He adopted the course which is not only unjustified but illegal. The appointment of Shri B.S. Janta, IAS, as the Managing Director the State Bank was perfectly legal and valid.

26. This is a case where an elected representative on the Board of Directors of the Punjab State Co-operative Agricultural Development Bank Ltd., Chandigarh, misused his authority as the President of the said Bank and continued to occupy the elected office to which he was not legally entitled to. He had lost the qualification to be a Director of the Board of the State Bank on January 14, 1991, but he manoeuvred not only to continue as a Director of the Board of the State Bank but also as its President. The file reveals that he had occupied Guest House of the State Bank exclusively for himself. During all this period he enjoyed the facilities of a chauffeur driven Bank's car and telephone to which he was not entitled to. The other petitioners succeeded in thwarting the attempt of the State Bank to fill the vacancies in the Board of Directors of the State Bank and continued as Directors to the Board of the State Bank. They not only misused their position but also misused the process of the Court. This is a fit case where exemplary costs should be awarded against the petitioners. We accordingly dismissed these writ petitions with costs assessed at Rs. 10,000/-(Rupees ten thousand) in each case. The costs will be paid to be State Bank.

27. Before parting with this judgment, we are constrained to observe that the Registrar, Co-operative Societies, Punjab, and the Managing Director of the State Bank did not perform their duties diligently and were negligent. If the Registrar had taken appropriate action against Sri. Mithu Singh (petitioner in C.W.P. No.3620 of 1993) in January, 1991, he would not have continued as Director/President of the State Board after that date. Mithu Singh has continued as Director/President of the State Board unlawfully for more than two years. The Managing Director of the State Bank, who was nominated by the State Government, was also remiss in performing his duties as he did not initiate appropriate steps against Shri Mithu Singh after he had lost the basic qualification for continuing as a Director/President of the State Board and permitted him to continue as such for more than two years. No explanation is forthcoming as to why he did not hold election from Zone No. 3 (Bhatina) after the vacancy had occurred. In other zones, vacancies had occurred under similar circumstances and election was held in the year 1992 to fill those vacancies. In order to prevent recurrence of illegalities of the type as have occurred in the instant case, we think it proper to issue notice to the Registrar, Co-operative Societies, Punjab, and the Managing Director of the State Bank, who were in office in the year 1991 and 1992, for dereliction their duties, to show cause as to why fine be not imposed upon them. Let notices to issue to them for January 7, 1994. The Additional Registrar (Judicial) will ascertain their particulars and issue them notices.