
(2015) 09 P&H CK 0284

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 20045 of 2014 (OandM)

Mohan Lal

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 17-09-2015

Acts Referred:

Haryana Co-operative Societies Act, 1984 — Section 26, 35, 85

Citation : (2015) 180 PLR 530

Hon'ble Judges : Rakesh Kumar Jain, J.

Bench : Single Bench

Advocate : Satbir Gill, for the Appellant; P.P. Chahar, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—This order shall dispose of a bunch of five writ petitions bearing CWP Nos. 20045 of 2014, 9608, 10033, 13804 and 14352 of 2015 as the question of law involved in all the cases is common. However, for the sake of convenience, CWP No. 20045 of 2014 is being kept as the lead case for the purpose of narrating the facts. In short, the petitioner was a member of the Managing Committee of the Sirsa Central Cooperative Bank Limited, Sirsa (hereinafter referred to as the "Central Bank"). The Managing Committee of the Central Bank held a meeting on 18.10.2010 to consider the nomination of one of its members to the Board of Directors of the Haryana State Cooperative Apex Bank Limited (hereinafter referred to as "HARCO Bank"). The resolution was passed and it was resolved that the petitioner, who was the Director of the Central Bank at that time, be nominated as member of the Board of Directors of the HARCO Bank. After the resolution was passed, the Central Bank informed the HARCO Bank, vide its letter dated 20.10.2010, that the petitioner, being the Director and representative of the Central Bank, has been nominated as member of the Board of Directors of the HARCO Bank. No doubt that the term of the Board of Directors of the HARCO Bank, to which the petitioner was nominated as a member, was of five years, however, the term of the Managing Committee of

the Central Bank, of which the petitioner was the Director, had expired on 18.07.2014. As a result thereof, the petitioner was not called in the meetings of the Board of Directors of the HARCO Bank as no agenda was served upon him. Hence, the present petition has been filed by the petitioner, assailing the action on the part of the HARCO Bank.

2. At the time of notice of motion, it was ordered by this Court that if any such meeting is held by the HARCO Bank, the petitioner would be at liberty to participate in such meetings, subject to the decision of the present writ petition.

3. Counsel for the petitioner has argued that the petitioner can be removed from the membership of the Board of Directors of the HARCO Bank only in terms of Rule 28 of the Haryana Cooperative Societies Rules, 1984 (hereinafter referred to as the "Rules"). It is also submitted that otherwise, the petitioner could have been removed in terms of Section 35 of the Haryana Cooperative Societies Act, 1984 (hereinafter referred to as "Act").

4. It is further argued that Bye-law 31 of the HARCO Bank (hereinafter referred to as the "Bye-laws") provides the constitution of the Board of Directors, Bye-law 33 provides the circumstances in which a member of the Board of Directors ceases to hold the office and Bye-law 34 deals with the term Of a Director. The aforesaid Bye-laws 31, 33 and 34 of the Bye-laws are also reproduced as under:--

"Board of Directors

The Board of Directors of the bank shall consist of:

- 1) M.D. of the Bank.
- 2) Chief General manager, Regional Office NABARD, Chandigarh or his nominee.
- 3) One representative of each of affiliated Central Coop. Banks provided that the representative is a member of the Managing Committee of the Central Coop. Banks and represents a society thereon.
- 4) R.C.S. Or his nominee.
- 5) Not more than one nominations of the Govt. of Haryana.
- 6) Two professional Directors having experience as specified by the RBI shall be co-opted with full voting rights in the committee if not already elected."

"33. A member of the Board of Directors shall cease to hold office if:

- i) The society of which he is representative ceases to be a member of the bank;
- ii) He absents from three consecutive meetings of the Board without sufficient reasons;
- iii) He applies to be or is adjudicated insolvent;
- iv) He becomes of unsound mind;

- v) He is convicted of any offence involving dishonesty or moral turpitude;
- vi) He is interested or become interested directly or indirectly in any contract made with the bank in any sale or purchase made by the bank privately or in auction or in any contract or transaction with the Bank (other than an investment or borrowing) involving financial interest;
- vii) He has committed any act which adversely effects the reputation of the bank."

"34. a) Subject to the provisions of byelaw No. 33, a Director elected shall hold office for five years from the date of election of the Board of the Bank or till he ceased from that status, whichever is earlier.

b) Any vacancy occurring on the Board shall be filled by co-option."

5. Counsel for the petitioner has vehemently argued that once the petitioner has been duly appointed, through a resolution, as a member of the Board of Directors of the HARCO Bank, being the Director of the Central Bank and its representative, he could not have been ignored by the HARCO Bank in its meetings.

6. It is further submitted that the term of the Board of Directors of the HARCO Bank, of which the petitioner was a member, is for five years and Bye-law 34 of the Bye-laws provides that the Director, so elected, shall hold the office for five years from the date of election of the Board of the Bank or till he ceased from that status, whichever is earlier. It is submitted that neither the period of five years of the Board of Directors of the HARCO Bank has expired, as it would expire in the month of March 2016, nor the petitioner has earned any disqualification in terms of Rule 28 of the Rules and Bye-law 33 of the Bye-laws. In support of his submissions, counsel for the petitioner has relied upon a Full Bench judgment of this Court in the case of Kulwant Singh Vs. State of Punjab and Others, .

7. On the other hand, counsel for the respondents have submitted that no doubt the petitioner was the Director of the Managing Committee of the Central Bank when the resolution was passed by the Central Bank for his nomination as a member of the Board of Directors of the HARCO Bank but his term as a Director of the Central Bank had expired on 18.07.2014 and once he loses the status of a Director of the Central Bank, he could not have been allowed to continue as a Director, being a representative Director of the Central Bank, on the Board of the Managing Committee of the HARCO Bank. In support of his submissions, he has relied upon a Division Bench judgment of this Court in the case of Jai Singh and others v. State of Haryana and others, 1977 P.L.J. 426.

8. It is also argued by learned counsel for the respondents that the judgment rendered by this Court in Kulwant Singh's case (supra) is not applicable because it deals with Section 19(2) of the Punjab Cooperative Societies Act, 1961 and Bye-law 30 of the Nawanshahr Central Cooperative Bank Limited, Nawanshahr,

whereas in the case in hand, the judgment rendered by this Court in Jai Singh's case (supra) would be fully applicable because it has interpreted the provisions of Section 26(6) of the Punjab Cooperative Societies Act, 1961 and Bye-laws 31(H), 32 and 34 of the HARCO Bank, which is an apex society and not a central society.

9. I have heard learned counsel for the parties and perused the available record with their able assistance.

10. There are three types of societies, namely, primary society, central society and the apex society. The Board of Directors of the apex society, i.e. HARCO Bank, is constituted from amongst the representatives of the central societies, on the basis of their nomination. The petitioner was admittedly a Director of the Central Bank when he was nominated by way of resolution on 18.10.2010 as a member of the Board of Directors of the HARCO Bank. The life span of the Board of Directors of the HARCO Bank and the Managing Committee of the Central Bank is five years and in the present case, the life span of the Managing Committee of the Central Bank was from 19.07.2009 to 18.07.2014, whereas the life span of the Board of Directors of the HARCO Bank is from March 2011 to March 2016. According to the respondents, the life span of the Managing Committee of the Central Bank has already expired on 18.07.2014 during the currency of appointment of the petitioner as a member of the Board of Directors of the HARCO Bank, whose life span is to expire in March 2016 and since the petitioner had lost his status of a Director/Representative of the Central Bank as its Managing Committee is no more in existence after its life span was over on 18.07.2014, therefore, he ceases to be a member of the Board of Directors of the HARCO Bank for the full term of five years.

11. The case of the petitioner is otherwise, as it is argued that as per Rule 28 of the Rules, the member of the Committee would cease to hold the office if he earns any kind of disqualification and as per Bye-law 33 of the Bye-laws, he would cease to be a member of the Board of Directors of the HARCO Bank if the society, of which he is a representative, ceases to be a member of the HARCO Bank. It is submitted that since the society, i.e. Central Bank, is still a member of the apex society/HARCO Bank, therefore, the member of the Board of Directors of the HARCO Bank would not lose his status of a Director, as has been done in the case of the petitioner. Insofar as the argument that in case the member of the Committee earns any disqualification, then the matter has to be referred to the Registrar is concerned, it is not the issue involved in this case because the petitioner has not earned any kind of disqualification, as prescribed in Rule 28 of the Rules for the purpose of his removal from the committee.

12. The only question which requires consideration in this case is as to whether the term of the Director/Representative of the Central Bank as a nominated member of the Board of Directors of the HARCO Bank is co-terminus with the expiry of the term of the Managing Committee of the Central Bank?

13. The answer to this question is not far fetched as it has already been

answered in Jai Singh's case (supra), in which the similar issue was involved and the Division Bench of this Court made the following observations:---

"3. In our view, there is no merit in the case set-up by the petitioners. The provisions of sub-section (6) of section 26 of the Act merely provide for the term of the committee and not for the term of a particular director. The term of a director may not be coextensive with the term of the committee (see clause 34(6)). If that were not to be so, then a director once elected could never be removed till the expiry of three years. However, such is not the case. Section 85 of the Act empowers the Government to make rules to carry out the purposes of the Act and clause (x) of Sub-section (2) of section 85 of the Act expressly authorises to frame rules for the suspension and removal of the members and the officers. Rule 26(0 of the Rules clearly provides that a member of the 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. Clause (ii) of Bye-law 31 of the By-laws clearly envisages that one representative of each of the affiliated Central Cooperative Banks would be on the Board of Directors of the Harco Bank provided such a representative happens to be a member of the Managing Committee of such a central cooperative bank and also represents a society thereon.

4. In the present case, it is admitted case that the petitioners are not members of the Managing Committees of the affiliated central cooperative Banks, as the terms of the Managing Committees of such banks, of which they were the members when elected representatives on the Harco Bank and thus directors of the Board of Directors of Harco Bank, had expired before the Registrar served on the petitioners the show cause notices and passed the impugned orders. From the perusal of the provisions of By-law 31(ii) it is clear that unless a person is the member of the Managing Committee of the affiliated central cooperative bank, he could not be on the Board of Directors of the Harco Bank. That being the position then by virtue of the provisions of clause (f) of Rule 26 even if a person at the time of his election as a representative satisfied the qualifications of being a member of the Managing Committee of the affiliated central cooperative bank, but if he later on ceased to be a member of the Managing Committee of the affiliated central cooperative bank, he would cease to be a Director of the Harco Bank, although the term of a Director of Harco Bank as recognized By-law 34 is three years. By-law 34 of the By-laws cannot over-ride clause (0 of Rule 26 of the Rules and, therefore. By-law 34 could be of no help to the petitioners."

14. Insofar as the judgment in Kulwant Singh's case (supra) is concerned, that was altogether on different facts as it was a case where the dispute was with regard to membership of the society and not of losing the status as a Director of the Managing Committee of the central society during the currency of the Board of Directors of the apex body. Even otherwise, in Kulwant Singh's case (supra), the Court was dealing with the Bye-laws of the central society, whereas

in Jai Singh's case (supra), the Bye-laws of the apex society have been dealt with, much-less the Bye-laws of the HARCO Bank itself. Thus, in view of the aforesaid discussion, there is hardly any scope in these writ petitions for interference by this Court.

Consequently, all the five writ petitions are hereby dismissed.

No costs.