(1994) 04 P&H CK 0008

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5024 of 1993

Mohinder Pal Singh Samundri — APPELLANT

Vs

The State of Punjab and Others — RESPONDENT

Date of Decision : 18-04-1994

Acts Referred:

Citation : (1994) 107 PLR 641

Hon'ble Judges : G.C. Garg, J

Bench : Single Bench

Advocate : H.S. Mattewal, Sukhbir Singh and J.S. Gill, for the Appellant; Charu Tuli, AAG for Respondent Nos. 1, 2, 3, 9 to 11 and 16, Jagan Nath Kaushal B.K. Khoji, M.S. Bedi, I.S. Saggu for Respondent Nos. 5 to 8 and V.P. Sharma and Rajesh Sharma, for the Respondent

Judgement

G. C. Garg, J.—Petitioner in this writ petition has prayed for the issuance of a writ of certiorari for quashing the order, dated January 19, 1993 of the Additional Registrar (Admn.) Co-operative Societies, Punjab, whereby the election of the Chairman and the Vice Chairman of the Punjab State Federation of Co-operative Societies Ltd. (for short ''the Housefed'') held on September 23, 1992 was set aside and also the order dated April 26, 1993 passed by the Registrar Co-operative Societies whereby appeal against the order dated January 19, 1993 of the Additional Registrar was dismissed. The petitioner also seeks quashing of the order dated April 27, 1993, Annexure P-8, whereby Sh. K. K. Bawa, respondent No. 5 was nominated as Director and appointed Chairman of the Housefed.

2. Housefed is a Co-operative Society registered under the provisions of the Punjab Co-operative Societies Act, 1961 (for short the Act''). Election to the Board of Directors of the Housefed was held on July 22, 1992. The petitioner as also respondent No. 5 were elected to the Board of Directors besides six other elected Directors. Bye-law 33 of the Registered Bye laws of the Housefed provides for the constitution of a Board of Directors of the Housefed. The Board consists of eight elected representatives from the affiliated rural and urban Co-

operative House Building Societies, three members nominated by the Government, one nominee each of the financing institutions and a Managing Director. The State Government in exercise of its powers u/s 26 of the Act nominated three Directors on the Board of Directors of the Housefed. It also nominated another Director on the Board of Directors in exercise of its powers under Clause (b) of the first proviso to Clause (a) of Sub-section (2) of Section 26 of the Act. The Punjab State Co-operative Bank Ltd. which has provided finances to the Housefed also nominated Shri Bhagat Singh as a Director on the Board of Directors of the Housefed. Resolution nominating Shri Bhagat Singh on the Board of Directors is Annexure P-1 to this petition. Bye-law 38 of the Bye laws provides that the Housefed shall have a Chairman and a Vice Chairman who will be elected by the members of the Board from amongst themselves. Rule 80-A of the Punjab Co-operative Societies Rules (for short ''the Rules'') provides a bar on the members on the Board of Directors nominated by the Government under Clause (a) of Sub-section (2) of Section 26 to vote in the election of the office bearers of the Housefed. Clause (b) of Sub-section (2) of Section 26 provides that where the Industrial Finance Corporation, the State Financial Corporation or any other financial institution notified in this behalf by the Government, has provided finance to the Co-operative Society, shall have the right to nominate one person on the Committee i.e. the Board of Directors of the Housefed.

3. Meeting of the Board of Directors was convened on September 23, 1992 for electing Chairman as also Vice-Chairman of the Housefed. In the said meeting, the petitioner was elected as Chairman and Bant Singh respondent No. 14 as Vice-Chairman. For the election of Chairman, five votes were polled in favour of the petitioner and four votes were polled in favour of respondent No. 5 Shri K. K. Bawa. It is necessary to notice at this stage that five votes polled in favour of the petitioner included the vote of Shri Bhagat Singh, a member nominated on the Board of Directors of the Housefed by the Punjab State Co-operative Bank Ltd. Undisputedly all the eight elected members on the Board of Directors took part in the election and the only other members who took part in the election was Shri Bhagat Singh who had been nominated by the Punjab State Co-operative Bank Ltd. Election of the Vice Chairman was, however, unanimous.

4. Shri K. K. Bawa and three other Directors filed a petition Under Sections 55 and 56 of the Act, for setting aside the election of Chairman and Vice-Chairman held on September 23, 1992, before the Registrar, Co-operative Societies Punjab, who in turn marked the said petition to Shri G.S. Aggarwal, Additional Registrar (Admn.) Cooperative Societies Punjab. .The only pica taken in the election petition while challenging the election of the petitioner was that Shri Bhagat Singh, a nominated member of the Punjab State Co-operative Bank, could not participate and cast his vote in the election of the office bearers of the Housefed as it was the privilege of only the elected Directors. It is not considered necessary to notice as to what happened during the pendency of the election petition except that the petition was ultimately heard and election of the

petitioner as also of Shri Bant Singh, respondent No. 14, was set aside by the Additional Registrar, respondent No. 3 by his order dated January 19, 1993, Annexure P-4. The petitioner filed appeal u/s 68 of the Act before the Registrar, Co-operative Societies. Appeal was ultimately heard by the Registrar, respondent No. 2 on April 21, 1993 and the order was reserved for April 26, 1993. The Registrar dismissed the appeal on April 26, 1993.

5. The further case of the petitioner is that Shri S. D. Bhatti, Additional Registrar, Cooperative Societies, who was nominated on the Board of Directors and appointed as the Managing Director under proviso (b) of Sub-section (2) of Section 26 of the Act, was transferred from the Housefed and posted as Executive Director in Spinfed and that Shri K. K. Bawa was nominated as a Government nominee on the Board of Directors of the Housefed and was further appointed as Chairman of the Housefed. According to the petitioner, Shri K. K. Bawa who was the elected member of the Board of Director could not be nominated as Director by the Government and appointed as Chairman of the Housefed. It is how the challenge is laid to Annexure P-8, an order by which Shri K. K. Bawa was nominated as Director and appointed as Chairman. The further case of the petitioner is that even if the nomination of Shri K. K. Bawa as a Government nominee is valid in law, he could not be appointed as Chairman, especially when the Government had thereafter appointed a Managing Director of the Housefed.

6. Four sets of the written statement have been filed, one by respondent No. 4, second by respondent No. 5, third on behalf of respondent 1, 9 and 16, and the fourth on behalf of respondents 2, 3, 10 and 11. In all the written statements, the orders passed by the authorities under the Act and the nomination of Shri K. K. Bawa by the Government on the Board of directors and his appointment as Chairman have been justified.

7. Before noticing the contentions of the learned counsel for the petitioner, it is considered appropriate to first notice the Rules and the Bye-laws to find whether Shri Bhagat Singh, nominee of the Punjab State cooperative Bank, was authorised to take part in the election of the office bearers of the Federation. Clause (b) of Sub-section (2) of Section 26 of the Act provides as under :-

"(b) Where the Industrial Finance Corporation , the State Finance Corporation or any other financing institution notified in this behalf by the Government has provided finance to a co-operative society, the Industrial Finance Corporation, State Finance Corporation or other financing institution, as the case may be, shall have the right to nominate one person on the committee".

Rule 80-A of the Rules provides as under :

"80-A. Bar on voting by government nominated members on certain matters. - The members nominated by the Government to the Committee of a Cooperative Society under Clause (a) of Sub-section (2) of Section 26 shall not vote in the election of office bearers of that Cooperative Society."

8. A reading of the above provisions clearly brings out that the members nominated on the Board by the Government are not entitled to take part in the election of the office bearers of the Cooperative Society. There is, however, no such bar so far as the members nominated on the Board of Directors by the financing institution under Clause (b) of Sub-section (2) of Section 26 of the Act are concerned. This means that if Shri Bhagat Singh had been validly and properly nominated as a member on the Board of Directors by a financing institution, he was entitled to take part in the election. The question, however, is whether Shri Bhagat Singh had been duly nominated on the Board of Directors of the Housefed and was, therefore, entitled to take part in the election of the office bearers. Clause (b) of Sub-section (2) of Section 26 provides that where the Industrial Finance Corporation, the State Finance Corporation have provided finance to the Housefed, then these financing institutions have a right to nominate one person each on the Board of Directors. The position is, however, slightly different if the finance is provided by any other financing institution. The section in so many words provides that if any other financing institution, notified in that behalf by the State Government, has provided finance to the Housefed, then the said financing institution has a right to nominate one of its nominees on the Board of Directors. The Punjab State Cooperative Bank, a financing institution, has admittedly provided finance to the Housefed but nothing has been brought on the record to show that the said financing institution has been notified by the State Government in that behalf. Till such time, this financing institution is notified, it has no right to nominate a person on the Board of Directors of the Housefed. No notification notifying the Punjab State Cooperative Bank as the financing institution has been brought to my notice and thus the inescapable conclusion is that Shri Bhagat Singh, who had been nominated on the Board of Directors vide Annexure P-1 had no right to take part in the election of the office bearers of the Housefed. Shri Bhagat Singh had admittedly taken part in the election of the office bearers of the Housefed and he cast his vote in favour of the petitioner. If his vote is not taken into consideration, then the petitioner and respondent No. 5 got four votes each and in that situation, either the election could have taken place by the draw of lots or by toss of coin or by any other mode but none was restored to.

9. Even if it is taken that Shri Bhagat Singh had been nominated on the Board as a representative of the financing institution in view of the provisions of bye law 33(iv) of the Bye-laws and the letter, Annexure R-5/1 and no objection was taken to his nomination still in my view he acquired no right to take part or to vote in the election of the Chairman and Vice Chairman. Such a nominee, if it all, would acquire a right to vote only after the financing institution is notified by the State Government.

10. Learned counsel for the petitioner has laid challenge to the orders of the Registrar and the Additional Registrar whereby the election of the petitioner as Chairman of the Housefed has been set aside. The precise contention of the learned counsel is that election of the petitioner has been set aside in the

absence of any evidence and also in the absence of a plea to the effect that the financing institution which Shri Bhagat Singh was representing was not notified. The further submission of the learned counsel is that anything beyond pleadings cannot be looked into by any authority under the Act especially when it was setting aside the election of the office bearers of the Housefed. Letter dated July 30, 1992 was not relied upon by the election petitioner at any time during the proceedings before the authorities and, therefore, could not be looked into for setting aside the election. Learned counsel in that behalf referred to the election petition, copy whereof is Annexure P-3.

11. Mr. J. N. Kaushal, Senior Advocate, learned counsel for the respondent, however, on the other side contended that the authorities under the Act were not trying an election petition but were only settling a dispute between the parties Under Sections 55 and 56 of the Act. Mr. Kaushal referred to Rules 51, 52, 53 and 55 to contend that giving of facts in the petition was not very relevant and the strict principle of pleadings as is required in election petitions was not to be followed in the settlement of dispute Under Sections 55 and 56 of the Act. The authority settling the dispute under the provisions of the Act is only a persona designate and such an order is subject to appeal and revision Under Sections 68 and 69 of the Act. According to the learned counsel, the only question that fell for consideration before the authorities was, whether Shri Bhagat Singh could or could not take part in the election of the office bearers of the Housefed and the authorities after examining the provisions of the Act and the letter dated July 30, 1992, came to the conclusion that Shri Bhagat Singh was not entitled to take part in the election.

12. Contention of the learned counsel for the parties has been considered. A finding has already been recorded that Shri Bhagat Singh who was nominated on the Board of Directors as a nominee of the Punjab State Cooperative Bank, a financing institution, was not entitled to take part in the election of the office bearers of the Housefed. A reading of the provisions of Clause (b) of Sub-section (2) of Section 26 of the Act clearly would go to show that only such financing institutions can nominate a member on the Board who have been notified in that behalf by the State Government and the only exception carved out is in the case of Industrial Financial Corporation and the State Finance Corporation and no other. During the course of arguments, it could not be disputed that the Punjab State Cooperative Bank had not been notified by the State Government as a financing institution and, therefore, Shri Bhagat Singh, what to talk of voting in the election of the office bearers of the Housefed, even could not be nominated on the Board of Directors. A reference to Paras 5 and 6 of the petition challenging the election of the petitioner clearly goes to show that respondent No. 5 had taken a specific ground that he took objection at the start of the meeting that Shri Bhagat Singh, a member nominated by the Punjab State Cooperative Bank could not participate in the election and cast his vote in the election of the office bearers, of the Housefed and that the election of the office bearers had taken place in violation of the provisions of the Act, the Rules and

the Bye-laws framed under the Act and was, therefore, liable to be set aside. Annexure R-5/1 is a letter dated July 30, 1992. It was written by the Managing Director of the Housefed to the Managing Director of the Punjab State Cooperative Bank pointing out therein that since the said institution has provided finance, if could nominate one representative on the Board of Directors and that fie could attend the meetings of the Board of Directors as an observer till such time the Government notified the cooperative Bank as a financing institution. Clause (iv) of Bye-law 33 of the Bye-laws of the Housefed provides for nomination of one member each by the financing institutions, who have provided finance to the Housefed. The Bye-laws do permit a financing institution to nominate one of its nominees on the Board of Directors but Clause (b) has to be given a harmonious construction so that both the provisions can work simultaneously and even if the provisions overlap, the provisions contained in the section of the Act are to be preferred. Harmonious construction of these provisions, to my mind, is that a nominee of a financing institution, which institution has not been notified by the State Government, is not en titled to take part in the election of the office bearers of the Housefed, though he may be nominated as such on the Board of Directors so that he can watch the interest of the financing institution he represents. This is precisely what has been held by the authorities under the Act while disposing of the petition Under Sections 55 and 56 of the Act by setting aside the election of the petitioner as Chairman of the Housefed. Thus, in my view, no exception can be taken to the orders passed by the authorities under the Act and the conclusions arrived at in these orders, and the same are, therefore, upheld. Since both the contesting candidates got four votes each in the election that took place on September 23, 1992, fresh election shall be held as per law for electing the office bearers of the Housefed at a very early date.

13. The other contention raised by the learned counsel for the petitioner is that respondent No. 5 could not be nominated as a Government nominee on the Board of Directors of the Housefed in exercise of its powers under Sub-section (2) of Section 26 of the Act, respondent No. 5 being already on the Board of Directors as an elected Director and even if he could be nominated, he could not be appointed as the Chairman of the Housefed, especially in view of the provisions of Bye-law 38 of the Bye-laws of the Housefed which, inter alia, provides that the Housefed shall have ft Chairman who will be elected by the members of the Board from amongst themselves.

14. In order to appreciate the contention, it is necessary to notice the provisions of Clause (a) of Sub-section (2) of Section 26 of the Act, which reads as under:-

"(2) Not withstanding anything contained in Sub-section (1)-

(a) Where the Government have subscribed to the. share capital of a cooperative society or has guaranteed the repayment of the principal of and payment of interest on debentures issued for loans raised by a cooperative society, the Government or any person authorised by it in this behalf, stall 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 cooperative society to the extent of twenty lacs of rupees or more, the Government may, notwithstanding any thing 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;"

15. In my view, a bare perusal of the provisions of Clause (a) of Sub-section (2) of Section 26, reproduced above, dearly authorise the State, Government to nominate any person on the Board of Directors. No qualification has been laid down either in the Act, Rules or the Bye-laws for such nomination. It is thus the sole discretion of the Government. Question, however, is whether the State Government can nominate a person on the Board of Directors as its nominee when the said person is already on the Board of Directors as an elected Director. Though no bar has been brought to my notice in that behalf yet a harmonious construction of the provisions inevitably leads to the conclusion that the State Government has a right to nominate a member on the Board of Directors, a person other than the one who is already on the Board of Directors. Mr. Bawa who is already on the Board as an elected Director could not be nominated as Government nominee on the Board of Directors. Such a nominee will not be able to watch the interest of the State Government as also the co-operative societies he is representing as an elected Director. In other words, Mr. Bawa would be a member of the Board of Directors in two capacities. This cannot be allowed to continue. If the Government was keen to nominate him as a Government nominee on the Board of Directors, it should have first obtained the resignation of Shri Bawa before appointing him as a Government nominee and in that situation, no objection could have been raised to his nomination. Even otherwise, such nominee ought to have vacated his seat as an elected Director immediately Willis nomination as a Government nominee. In the present case, Shri Bawa did not tender his resignation as elected Director even after his nomination as Government nominee on the Board of Directors and the situation continues to be so even today. Once it is concluded that Shri Bawa being already on the Board of Directors as an elected Director representing the Co-operative Society, he could not be appointed on the Board of Directors as a Government nominee. It necessarily follows that he could not be appointed as a Chairman by the Government in exercise of its power under the proviso to Clause (a) of Sub-section (2) of Section 26 of the Act. Resultantly, Annexure P-8 nominating Shri Bawa as a nominee on the Board of Directors and further appointing him as Chairman of the Housefed has to be quashed and it is so quashed.

16. The contention of the learned counsel for the petitioner that Chairman and Vice-Chairman cannot be appointed by the State Government and that they are only to be elected by the members of the Board from amongst themselves, cannot be accepted. Bye-law 38 of the Bye-laws provides as under :-

"38. The Federation shall have a Chairman and a Vice-Chairman who will be elected by the members of the Board from amongst themselves. Their term of office shall be countermined with the term of the Board."

17. The above bye-law only provides that the Chairman and Vice-Chairman will be elected by the members of the Board. This will be so when the Government has not exercised its option in terms of proviso (a) of Clause (a) of Sub-section (2) of Section 26. The Government has a right under the Act to appoint a Chairman from amongst the members nominated by it if the State Government has subscribed to the share capita! of the Housefed to the extent to twenty lacs of rupees or more and not otherwise. In the presence of the provision of appointing a Chairman by the Government existing in the Act, the provisions made in the bye-laws will have to be read down to that extent so as to make the provisions workable. The position regarding election of the Vice-Chairman would however stand on a different footing, the State Government having no power to appoint the Vice-Chairman.

18. The contention of the learned counsel that the orders are based on no evidence and that there was no plea raised in the petition that financing institution represented by Bhagat Singh was not notified, cannot be sustained as the findings have been arrived at by the authorities not on the basis of evidence but solely on the interpretation of the provisions of the Act and the Rules and this is precisely what has been noticed above while coming to the conclusion, whether Bhagat Singh was entitled to cast his vote in the election of the office bearers to the Housefed. Reference made to Nirmal Singh Khazan Chand and Others Vs. State of Punjab and Others, ; Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, ; D. Venkata Reddy v. R. Sultan and Ors. (1976) 2 SCC 445 and Rajendra Singh Yadav Vs. Chandra Sen and Others, is of no assistance to the learned counsel as in all these cases it was was held that the election cannot be set aside lightly, but this is not the position here as the election in this case has been set aside on pure interpretation of the provisions of the Act and the Rules.

19. For the view taken above it is not considered, necessary to consider still another contention of the learned counsel, namely, whether the Government after appointing a Chairman could still appoint another person as the Managing Director of the Housefed, as the same does not survive in the facts of this case.

20. The petitioner also levelled allegations pi mala fides against. respondent No. 9 Shri Karam Singh Gill, inasmuch as he was present at the time of election of the office bearers in the Housefed,. but a reference to the allegations made clearly goes to show that these allegations are for the sake of allegations, and nothing has been attributed to respondent No. 9. The mere presence of the said

respondent in the meeting of the Board of Directors at the time of election will not vitiate the election or the subsequent proceedings. There is no serious or specific allegation against the said respondent and/or the effect thereof. In these circumstances, I see no merit in the contention of the learned counsel for the petitioner to the effect that the orders are vitiated by mala fides.

21. The position that emerges from the aforesaid discussion is that this writ petition is partly allowed. Order Annexure P-8 is quashed. However, orders dated January 19, 1993 and April 26, 1993 passed by the Additional Registrar (Admn.) Co-operative Societies, Punjab and the Registrar, Cooperative Societies, Punjab respectively are maintained. There shall be no order as to costs.