

(1993) 08 P&H CK 0058
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5316 of 1993

Mohinderpal Singh Samundri

APPELLANT

Vs

The Registrar, Co-operative Societies, Punjab, Sector 17,
Chandigarh, and others

RESPONDENT

Date of Decision : 26-08-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1994 P&H 93 : (1994) 106 PLR 90

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

Bench : Single Bench

Advocate : H.S. Mattewal, Sukhbir Singh and J.S. Gill, for the Appellant; Mrs. Charu Tuli, AAG, Mr. Jagan Nath Kaushal, Sr. Adv, Mr. Amar Singh, Mr. B.S. Khoji, Mr. M.S. Bedi, Mr. V.P. Sharma and Rajesh Sharma, for the Respondent

Judgement

1. The controversy in this writ petition is, whether the petitioner was eligible to Seek election to the Board of Directors of the Punjab State Federation of Co-operative House Building Societies Limited, Chandigarh, (for short "the Housefed").

2. Facts giving rise to this writ petition, by and far are not in dispute. Members of the Housefed, and Apex Society are other cooperative societies in the State of Punjab registered under the Punjab Co-operative Societies Act, 1961 (for short "the Act"). There is thus, no member of the Housefed in his individual capacity. The petitioner is a member of the Mukerian Co-operative House Building Society Ltd., Mukerian (for short "the Mukerian Society"). He is also a member of the Avon Co-operative Poultry Industrial Society Ltd., Mukerian (for short "the Avon Society"). The Mukerian Society is a member-Society of the Housefed. This society falls in Zone-1 and it nominated the petitioner as its representative to take part in the election of the Managing Committee (Board of Directors) of the Housefed. The petitioner as a nominee of the member-Society could also contest the election to the Board of Directors. Neither the petitioner nor the Mukerian

Society is a defaulter to the Housefed or any Co-operative Society in the State. However, the Avon Society of which the petitioner is also a member, happened to be defaulter of the Hoshiarpur Central Co-operative Bank Limited, Hoshiarpur (for short "the Hoshiarpur Bank"), The Avon Society is not the member-Society of the Housefed. Amar Singh, respondent No. 4 was nominated to take part in the election of the Housefed by the Sukhna Co-operative House Building Society Limited, Mohali (for short "the Sukhna Society"), a member-Society of the Housefed. Amar Singh respondent 4 also contested election to the Board of Directors of the Housefed from Zone-1. Before the Returning Officer, Amar Singh respondent 4 raised an objection to the eligibility of the petitioner to contest election on the ground that the Avon Society of which the petitioner is a member, was defaulter of the Hoshiarpur Bank and, therefore, was disqualified to seek election, in view of Rule 25 of the Punjab Co-operative Societies Rules, 1963 (for short "the Rules") and bye-law 36 of the Bye-laws of the Housefed. The Returning Officer, however, rejected the objection. The petitioner having polled 13 out of 14 votes was consequently declared elected from Zone-I in the election held on July 22, 1992.

3. Amar Singh, respondent No. 4 challenged the election of the petitioner as a Director of the Housefed from Zone-I by filing an election petition under S. 55/56 of the Act. Copy of the election petition is Annexure P-I on the record. The challenge to the election was, inter alia, on the ground that Avon Society of which the petitioner was a member, was defaulter to the tune of Rs. 58,310/- to the Hoshiarpur Bank and, therefore, he was disqualified from contesting the election. This petition was entrusted to the Joint Registrar, Co-operative Societies (Planning), Punjab, Chandigarh, respondent No. 2, for disposal. During the pendency of the said election petition, Amar Singh, respondent No. 4 made a statement that he did not want to produce any evidence and the election petition be decided only on the basis of documents filed before the Returning Officer. The Joint Registrar by his order dated May 7, 1993 allowed the election petition and set aside the election of the petitioner as Director of the Housefed. It is this order of the Joint Registrar which has been challenged in this writ petition by the petitioner.

4. The election to the Housefed, an Apex Society, is governed by the Punjab Cooperative Societies Rules, 1963. These Rules also govern election to various bodies of the Primary and Central Societies. Rule 23 of the Rules provides that the members of the Committee of a Co-operative Society shall be elected in accordance with the rules given in Appendix "C". Appendix "C" details the procedure for conducting election and declaration of result. Rule 25 of the Rules details disqualifications which render a member ineligible to seek election as a member of the Committee. Rule 26 of the said Rules provides for contingencies on the happening of which an elected member shall cease to be an elected member of the Co-operative Society. The Housefed has framed its own bye-laws. Bye-law 36 provides for further conditions of eligibility for seeking election as a member of the Board of Directors of the Housefed.

5. In order to appreciate the controversy raised herein, it is considered necessary to notice the provisions of Rule 25 of the Rules and Bye-law 36 of the bye-laws of the House-fed, which read as under :

"25. Disqualification for membership of committee-- No person shall be eligible for election as a member of the committee if :--

(a) he is in default to any Co-operative Society in respect of any sum due from him to the society or owes to any Co-operative Society an amount exceeding his maximum credit limit;

xxx xxx xxx xxx

xxx xxx xxx

(h) he incurs any other disqualification laid down in the bye-laws of the society."

"Bye-law 36. No person shall be eligible for election as a member of the Board of the Federation if :--

(i) he or the society to which he belongs or is a member or is a representative is in default in respect of any sum due to the Federation or any of the affiliated societies or any other society."

6. Before considering the controversy raised herein, on merits it will be appropriate to deal with the preliminary objection raised by the respondents about the maintainability of the present writ petition without first exhausting the remedy of appeal. It could not be disputed that order dated May 7, 1993 passed by the Joint Registrar is appealable under the Act. The writ petition was admitted after issuing notice of motion and separate written statements had been filed by three sets of respondents. The objection, as noticed had been raised in the written statement yet the Division Bench admitted the writ petition and stayed the operation of the impugned order. In this context, a part of the order of the Division Bench, may be noticed as under :--

"Notice was accepted by counsel for the respondents and we have heard learned counsel for the parties.

In the peculiar facts and circumstances of this case, we admit the petition and direct its hearing along with CWP No. 5024 of 1993 which has already been admitted and ordered to be listed for hearing on 19th instant. Operation of the impugned order will remain stayed.

A few words are necessary why we are staying the operation of the impugned order. The fate of the election dispute in this case turns on the interpretation of bye-law 36 of the bye-laws of the Federation read with Rule 25(a) and (b) of the Punjab Co-operative Societies Rules, 1963 as election of the petitioner has been set aside and respondent No. 4 declared elected society on the ground of wrongful acceptance of nomination paper of the petitioner. There is a background of mala fides and extraneous consideration giving rise to a number of writ petitions which

had to be filed by the petitioner from time to time, necessitating orders of this Court. Though respondent No. 4 was not concerned in that dispute, the officer, we are informed, was the same and this fact cannot, in the peculiar background, be ignored as of no consequence."

7. Would in the above circumstances it be appropriate to throw the writ petition on the ground that the petitioner has first not exhausted the alternative remedy? The answer has to be in the negative. It is now well settled that this Court does not encourage entertaining the writ petitions when an alternative remedy is available under the Act. In the instant case, however, as noticed by the Motion Bench, the entire controversy revolves around the interpretation of bye-law 36 of the bye-laws and Rule 25 of the Rules. The writ petition has been admitted after hearing learned counsel for the parties. In this situation, the objection as to the maintainability of the petition cannot be sustained.

8. During the course of arguments, still another objection was raised as to the competency of the petitioner to file this petition. It was sought to be argued that it was only the society, which had nominated the petitioner, that could challenge the impugned order and not the petitioner in his individual capacity. There is no merit in this objection. It is the petitioner whose election had been challenged and, therefore, it is he who is the aggrieved person and thus, entitled to challenge the order. This objection also falls to the ground.

9. On merits, there is some controversy between the parties, whether Avon Society is a defaulter of the Hoshiarpur Bank and, whether this fact stands proved on the record of the Joint Registrar in accordance with law. Be that as it may, it is not considered necessary to go into this question as this petition can be decided on the interpretation of the Rules and the Bye-Laws by taking that the Avon Society was a defaulter to the Hoshiarpur Bank.

10. Can on the interpretation of Rule 25 and bye-law 36 *ibid* having regard to the admitted facts noticed above, it be said that the petitioner was not eligible to contest election to the Board of Directors of the Housefed. Initially, the respondents took a stand that the petitioner was ineligible on account of provisions of Rule 25(a) of the Rules but later, having regard to the pronouncements of this Court in *Thakur Janak Singh v. State of Punjab* 1974 PLJ 119, *Prem Chand Gupta v. State of Haryana* 1976 PLJ 340, *Ajaib Singh v. Shri Kishan Saroop*, the Deputy Registrar, Co-operative Societies, Karnal 1980 PLJ 275 and *Ranjit Singh v. Registrar, Co-operative Societies, Haryana* (1988) 3 P L R 109, it was conceded that the petitioner was ineligible to contest election only because of the provisions of bye-law 36 of the Bye-Laws. A reference to the impugned order would show that the petitioner was held to be ineligible to contest election not in terms of Rule 25(a) of the Rules, but in terms of bye-law 36 of the Bye-Laws. It was observed in the order that spirit of bye-law 36 of the Bye-Laws of the Housefed was that the person contesting the election of the Housefed should not be a defaulter of any other society. By noticing that Mohinderpal Singh, now writ petitioner was not an ordinary member of Avon

Society but was a cashier thereof and that this society (Avon Society) was a defaulter to the Hoshiarpur Bank, he was taken to be a defaulter on the date of election of the Housefed in view of bye-law 36. Though in the election petition, Mohinderpal Singh petitioner was stated to be a cashier of Avon Society, but this fact was denied in the reply filed to the election petition. Nothing else could be pointed out to show that he was a cashier of the Avon Society. The petitioner herein is neither a nominee of Avon Society nor Avon Society is a member of the Housefed. It is in this situation to be seen, whether the petitioner was ineligible to contest election to the Board of Directors of the Housefed.

11. Some of the disqualifications for seeking election to the Committee of a Society have been noticed in Rule 25 of the Rules. It seems that the list contained in the said rule is not exhausted and it is left open to the societies concerned to lay down any other disqualification for a person seeking election to the Committee by making appropriate rules. This is so discernible from sub-rule (h) of Rule 25 of the Rules which provides that a person seeking election should not have incurred any other disqualification laid down in the bye-laws of the society. In the present case, as noticed above, the Housefed has framed bye-law 36 providing for additional disqualifications for the members seeking election to the Board of Directors. An analysis of bye-law 36 of the Bye-Laws shows that the Housefed has provided additional disqualifications for the individuals and the societies to which they represent to seek election to the Board of Directors. A close reading thereof would show that a member seeking election to the Board of Directors should not be defaulter in respect of any sum due to the Federation or any of the affiliated societies or any other society in his individual capacity. It additionally provides that the society to which an individual seeking election belongs or is a nominee, should also not be defaulter in respect of any sum due to the Federation or any other affiliated society i.e. the one affiliated to the Federation or any other Society. To me, it is clear that a person seeking election as a representative of the Cooperative Society will not be eligible to seek such election if he in his individual capacity is a defaulter to the Housefed, any society affiliated to the Housefed or any other society and he will again not be eligible to contest election if the society he represents is a defaulter either to the Housefed, any society affiliated to the Housefed or any other Cooperative Society. In the present case, it is not shown that the petitioner or the Mukerian Society, which he represents, was a defaulter either to the Housefed or any society affiliated to the Housefed or any other Co-operative Society. From the mere fact that the petitioner happened to be a member of the Avon Society, a society not affiliated to the Housefed but defaulter to the Hoshiarpur Bank, it could not be inferred that the petitioner was a defaulter of the Avon Society and, therefore, had incurred disqualification to seek election to the Board of Directors of the Housefed. The assertion of the election petitioner that the present petitioner was a cashier of Avon Society, has not been proved on the record and even otherwise, if a member happened to be a cashier of a society, it cannot be inferred that he incurred disqualification of being defaulter in respect of any sum

due from him to that society only on the ground that the said society owes some amount to a Cooperative Bank, It could not be demonstrated that the petitioner was in any way ineligible to seek election to the Board of Directors of the Housefed or that he was a defaulter of any Co-operative Society, whether affiliated to the Housefed or otherwise. What has been shown is that the Avon Society of which the petitioner also happened to be a member was defaulter of the Hoshiarpur Bank. From this fact alone, it cannot be inferred that the petitioner incurred disqualification of being defaulter either to the Avon Society or to the Hoshiarpur Bank. The petitioner would have incurred disqualification of being a defaulter to the Avon Society only if the Avon Society had raised a demand against the petitioner which the latter would have failed to comply. Election in a democratic set up should normally be not set aside on fanciful allegations or on evidence of shaky nature. A heavy onus lies on the election petitioner to make out a very strong case for setting aside the election. The election cannot be set aside on mere ipse dixit of the allegations. In the present case, it has been assumed that the petitioner was a cashier of Avon Society, in the absence of any evidence in that behalf and consequently concluded him to be a defaulter of the society. This is too far-fetched a conclusion. In the circumstances noticed above, it cannot be held that the petitioner was in any way disqualified to seek election to the Board of Directors of the Housefed.

12. For the foregoing reasons, order dated May 7, 1993 passed by the Joint Registrar (Planning), respondent No. 2, cannot be sustained and the same is consequently quashed. The writ petition is allowed accordingly, with costs.

13. Petition allowed.