
(2014) 02 P&H CK 0179
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 21996 of 2012

Prithavi Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 10-02-2014

Acts Referred:

Haryana Co-operative Societies Act, 1984 — Section 2(e), 21, 28, 28(4)

Citation : (2014) 175 PLR 729 : (2014) 4 RCR(Civil) 45

Hon'ble Judges : S.S. Saron, J; Navita Singh, J

Bench : Division Bench

Advocate : Gobinder Singh, Advocate for the Appellant; H.S. Sran, Addl. A.G. and Gaurav Singla, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

S.S. Saron, J.—Petitioner-Prithavi Singh is a member of the Adarsh Chadiwal Milk Producers" Cooperative Society Ltd., Chadiwal; Petitioner-Gurnam Singh is a member of the Cariwal Milk Producers" Cooperative Society Ltd., Cariwal and petitioner - Hardev Singh is a member of the Mirzapur Khed Milk Producers" Cooperative Society Ltd., Mirzapur Khed. The said Societies are further members of the Sirsa District Cooperative Milk Producers" Union Ltd., Sirsa (Milk Producers" Union-for short). The Milk Producers" Union is further member of the Haryana Dairy Development Cooperative Federation Ltd., Panchkula ("HDDCF"-for short). The area of operation of the Milk Producers" Union has been divided into 9 zones to facilitate the election of the Board of Directors. The elections of the Board of Directors of HDDFC are held on the basis of rotation with 1/3rd of the members retiring every year. This is in accordance with Bye law 16.3 of the Bye-laws of the Milk Producers" Union. When the election of the Milk Producers" Union is to be held, the members of the Milk Producers" Cooperative Societies send one of its member to participate and vote in the election in terms of Section 21 of the Haryana Cooperative Societies Act, 1984 (1984 Act-for short). Elections for the office of three Directors of the Milk Producers" Union from zones No. 2, 4

and 5 were held in December, 2009. The petitioners were authorized by their respective Milk Producers' Cooperative Societies to participate and vote on its behalf in the election of the Board of Directors of the Milk Producers' Union. The petitioners participated and contested the elections. They were declared elected as Directors of the Milk Producers' Union from Zones No. 2, 4 and 5 respectively. In terms of 1984 Act, elections of all types of Cooperative Societies i.e., Primary, Central and Apex Societies are conducted in accordance with provisions of Sections 21 and 28 of the 1984 Act as also Rules 25 read with Appendix "A" and Rule 27 of the Haryana Cooperative Societies Rules, 1989 (1989 Rules-for short). The challenge of the petitioners in the present petition is to the second proviso to Sub Section (4) of Section 28 of the 1984 Act and Bye-law 16.3 of the Byelaws of the Milk Producers Union relating to tenure of the Committee. In terms of Section 28(4) of the 1984 Act, it is provided that the "Committee" (which is defined in Section 2(e) to mean the governing body of the cooperative society by whatever name called, to which the management of the affairs of the society is entrusted) shall, unless removed earlier by the Registrar, hold office for a period of five years from the date of election. In terms of the second proviso to Section 28(4), which is assailed in the present petition, it is envisaged that the tenure of the committee of the Primary, Central and Apex Milk Producers Cooperative Societies shall be as specified in the Bye-laws of such Societies. In terms of Bye-law 16.3 of the Bye-laws of Milk Producers Union, the elected members of the Board are to hold office for a period of three years and 1/3rd members are to retire by rotation every year. The elected members are to retire either by mutual consent or by drawing lots for the first two years and thereafter the elected members, are to retire on their turn. Subject to the provisions of the 1984 Act and the 1989 Rules, the retiring members are eligible for re-election.

2. It is submitted that the second proviso of Section 28(4) of the 1984 Act and Bye-law 16.3 of the Bye-laws of the Milk Producers Union are ultra vires to the main provision of Sub-section (4) of Section 28 of the 1984 Act, which provides for a fixed tenure to the Committee for a period of five years from the date of election.

3. Written statement has been filed by Sh. Yogesh Sharma, Deputy Registrar Cooperative Societies Haryana on behalf of Registrar Cooperative Societies Haryana (respondent No. 2). It is submitted that the challenge to Bye law 16.3 of the Bye-laws of the Milk Producers' Union is not tenable. In terms of the second proviso to Section 28(4) of the 1984 Act, the tenure of the Committee of the Primary, Central and Apex Milk Producers' Cooperative Societies is as specified in the Bye-laws of such societies, which has an overriding effect. Therefore, as the petitioners are members of the Primary Milk Producers' Cooperative Societies, their terms of the members of the Society is to be as per Bye-laws of the Milk Producers' Union, which has an overriding effect and the challenge to the same is not tenable.

4. Written statement has also been filed on behalf of respondents No. 3 and 4-

the Milk Producers" Union through its Chief Executive Officer. It is submitted that no cause of action survives in favour of the petitioners because as per Bye-laws of the Milk Producers" Union, once the petitioners have completed the required tenure, then no further extension can be granted. All the petitioners, it is submitted, are ineligible from different zones i.e. Zones No. 2, 4 and 5. Therefore, no cause of action survives in their favour. It is submitted that in view of the proviso to Section 28(4) of the 1984 Act, the Bye-laws have an overriding effect. Therefore, the present petition is not maintainable.

5. During the course of hearing, it was brought to our notice that the Haryana Government (Law and Legislative Department) has issued notification dated 10.05.2013 whereby the Haryana Cooperative Societies (Amendment) Act 2013 (Haryana Act No. 10 of 2013) has been enforced. In terms of the said Amendment Act, Section 28(4) of the Principal 1984 Act has been amended and in place of Sub Section (4), the following Sub Section has been substituted:-

"(4). The committee shall, unless superseded earlier by the Registrar, hold office for a period of five years from the date of election and the term of office bearers shall be coterminous with the term of the committee.

Provided that irrespective of anything contained in the bye-laws, the committee may fill a casual vacancy in the committee by election, if the term of office of the committee is more than half of its original term, or by co-option, if the term of office of the committee is less than half of its original term, as the case may be, out of the same class of members in respect of which the casual vacancy has arisen."

6. In terms of the above amended sub Section (4) of Section 28 of the 1984 Act, the Committee which means the governing body of the cooperative society by whatever name called, to which the management of the affairs of the society is entrusted as defined in Section 2(e) of the 1984 Act, shall, unless superseded earlier by the Registrar, hold office for a period of five years from the date of election and the term of office bearers is to be coterminous with the term of the committee. In terms of the proviso it is provided that irrespective of anything contained in the bye-laws, the committee may fill a casual vacancy in the committee by election, if the term of office of the committee is more than half of its original term, or by co-option, if the term of office of the committee is less than half of its original term, as the case may be, out of the same class of members in respect of which the casual vacancy has arisen. The second proviso to Section 28(4) which earlier provided that the tenure of the Committee of Primary, Central and Apex Milk Producers Cooperative Society shall be as specified in the bye-laws of such societies has been omitted and is now no longer part of the statute. Bye-laws 16.3 of the Milk Producers Union which provides for retirement of 1/3rd members by rotation reads as under:-

"16.3 The elected members of the Board shall hold office for a period of three years and, 1/3rd members shall retire by rotation every year.

The elected members shall retire either by mutual consent or by drawing lots for the first two years and thereafter the elected members, shall retire on their turn. Subject to the provisions of Act and Rules, the retiring members shall be eligible for re-election."

7. The said Bye-law 16.3 could be said to have some effect in the context of the second proviso to Section 28(4) of the 1984 Act, which now stands omitted. Bye-laws of the cooperative societies are to be in line with the statutory provisions of the 1984 Act, which has fixed the period for which the committee is to hold office. The amended provisions of Section 28(4) of the 1984 Act provides that the committee is to hold office for a period of five years from the date of election and the term of office bearers shall be coterminous with the term of the committee. Therefore, the Bye-law 16.3 after the amendment that has been carried out by the Haryana Cooperative Societies (Amendment) Act, 2013) (Haryana Act No. 10 of 2013) notified on 10.05.2013 is no longer of any consequence as the Bye-laws are not to be in conflict with the principal statutory provisions. A Division Bench of this Court in Sadhu Ram and Bhup Singh v. State of Haryana, (1976) 78 PLR 308 held that the Bye-laws of a Cooperative Society cannot violate or run counter to the statutory provisions under which the same has been duly registered. In case of conflict between the Act and the Rules framed thereunder, the Bye-laws must give way to the parent provisions of the Act. In *Indraj Singh v. The State of Haryana Cooperative Department and another*, 1976 PLJ 91, this Court made a reference to the case of *Ram Jattan v. The State of Haryana and others*, 1976 PLJ 24 wherein it was held that bye-laws of the society which curtail the period of membership of the society cannot be treated as valid. The said decision was reiterated in *Indraj Singh's case* (supra). Therefore, it is quite evident that Bye-law 16.3 which provides that elected members of the Board shall hold office for a period of three years and 1/3rd members shall retire by rotation every year being in conflict with Section 28(4) of the 1984 Act (as amended) cannot be said to be valid w.e.f. 10.05.2013. In other words, the tenure of the committee having been fixed for a period of five years from the date of election by the statutory provisions of the amended 1984 Act, the same cannot be curtailed by the Byelaws and it is statutory provisions of the principal Act which would hold the field and the term for which the Committee shall hold office and the term of office bearers shall be coterminous with the term of the committee shall be operative and effective. The petitioners in the present case have ceased to be members of the Milk Producers' Union as they retired w.e.f. 30.12.2012. Their case was that they were entitled to continue to hold the post of Director upto 30.12.2013. However, since they already stand retired in terms of the unamended statutory provisions, no relief can be granted to them. After 10.05.2013, the provisions of Section 28(4) of the 1984 Act shall determine the period for which the Committee shall hold office and the term of office bearers shall be coterminous with the term of the committee. Therefore, no relief can be granted to the petitioners. However, the authorities concerned, may take steps to amend the Bye-laws in accordance with the statutory

provisions of the 1984 Act as have been amended.

The writ petition is accordingly disposed of.