
(2011) 06 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6443 of 2011

Rajinder Singh Brar and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 01-06-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Co-operative Societies Act, 1961 — Section 26
Punjab Co-operative Societies Rules, 1963 — Rule 12, 23, 4, 4(2)

Citation : (2012) 1 ILR (P&H) 534 : (2011) 163 PLR 673

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mehinder Singh Sullar, J.—The epitome of the facts, culminating in the commencement, relevant for disposal of the present writ petition and emanating from the record, is that the Management of the Fazilka Central Cooperative Bank Limited, Fazilka at Abohar respondent No. 4 (for brevity "the respondent-Bank") vested in the elected members of the Board of Directors and is governed by the provisions of The Punjab Cooperative Societies Act, 1961 and The Punjab Cooperative Societies Rules, 1963 (hereinafter to be referred as "the Act and the Relevant Rules") and its Bye-Laws.

2. The petitioners claimed that the membership of the Board of Directors of the respondent-Bank consists of different Cooperative Societies. The previous term of the Board of Directors expired on 07.10.2010. As, the outgoing Board of Directors were required to make arrangement for the constitution of new Board of Directors, 90 days before the expiry of its term, therefore, it passed a resolution dated 05.10.2010 (Annexure P-2), with regard to the conduct of election of the Board of Directors. It was also resolved that a general body meeting be convened to amend its Bye-Law No. 3 to include and cover the societies of Tehsil Jalalabad, in the area of operation of the Bank and to exclude

the numbers of societies in zone Nos.8 and 9, which were under winding-up process and, as such, after completion of the whole process, the fresh zone be constituted by including/excluding the member societies, in accordance with law, before the commencement of the election process.

3. As, the term of the previous Board of Directors expired, therefore, the Registrar, Cooperative Societies appointed its Administrator. The fresh zonal list of voters (Annexure P-3) was prepared. According to the petitioners, the fresh zonal list (Annexure P-3) of voters was changed, in order to help the persons of the ruling party mentioned therein. The Joint Registrar issued election notice dated 07.02.2011 (Annexure P-4) and invited the objections to newly proposed zonal list of voters. Petitioner Nos.2 and 3-Jag-dev Singh and Mohinder Singh, filed the objection petition (Annexure P-5) in this regard.

4. Instead of finally deciding the objections, the Joint Registrar wrote a letter dated 10.03.2011 (Annexure P-6), informing the Deputy Registrar, Cooperative Societies that the zonal list of voters should be framed by strictly following the legal provisions and the situations, on the basis of which, the societies have been shifted from one zone to another. He has also attached the list of new zones.

5. Thereafter, the Deputy Registrar sent the case in original, to the Assistant Registrar, Cooperative Societies, with the direction that the zones should be framed, by keeping in view the instructions, contained in the Act, "Appendix 'C'" of the Relevant Rules 1963, Bye-Laws, election guidelines and the same be again sent to his office, vide order dated 22.03.2011. Then, the Assistant Registrar, Cooperative Societies sent the same to the District Manager of the respondent-Bank, with the direction that the zone should be framed by keeping in view the directions given in the abovesaid letter (Annexure P-6). The matter was again referred to the Joint Registrar by the District Manager of the respondent-Bank, by way of letter dated 31.03.2011 (Annexure P-7).

6. In this manner, the Joint Registrar again referred the matter back to the Deputy Registrar on the same very day,/by virtue of impugned order dated 31.03.2011 (Annexure P-8), which in substance is, as under:-

In reference to your office letter under reference on the subject cited above, the clarification sought has been sent to this office vide letter No. 5A-I/JRF/1462 dated 10.3.2011. After perusing the same, the undersigned is agree with the zones framed for the election of the Board of Directors of the institution mentioned in the subject and approve the same in to with the direction that the election programme be prepared immediately and the same be sent to this office.

7. The petitioners claiming themselves to be the members of their respective societies, did not feel satisfied and preferred the instant writ petition, challenging the impugned order dated 31.03.2011 (Annexure P-8), invoking the provisions of Articles 226/227 of the Constitution of India.

8. The case set-up by the petitioners, in brief, insofar as relevant, was that the

Joint/Deputy Registrars, or the Returning Officer, did not have the jurisdiction to change the zonal list of voters (Annexure P-3). The Returning Officer ought to have conducted the election, as per previous zonal list of voters (Annexure P-I). The new zonal list of voters and the impugned order were stated to be illegal and without jurisdiction. On the basis of aforesaid allegations, the petitioners sought the quashment of the impugned order (Annexure P-8), in the manner indicated hereinabove.

9. The respondents contested the claim of the petitioners. Respondent Nos. 1 to 3 filed their joint written statement, while respondent No. 4-Bank filed its separate written statement, inter alia, pleading certain preliminary objections of, maintainability of the writ petition, cause of action and locus standi of the petitioners. The respondent-Bank claimed that earlier zonal list of the voters was framed and approved as back as in the year, 2005 during the previous tenure of the Board of Directors. Thereafter, 14 new societies were admitted as members of the Bank. Similarly, since some societies were under winding-up process and area of their operation was to be changed, so, it was felt necessary to recast the zones, so as to include the new members in the zonal list and to exclude the ineligible members from the area of operation of the respondent-Bank. Therefore, the new zonal list of voters was duly approved by the Joint Registrar, Cooperative Societies. In all, according to the respondents that, the new zonal list of voters was prepared to include the names of subsequently newly formed Co-operative Societies, in accordance with the provisions of the Act, Relevant Rules, Bye Laws and the guidelines. It will not be out of place to mention here that the respondent-Bank has stoutly denied all other allegations contained in the writ petition and prayed for its dismissal.

10. Assailing the impugned order (Annexure P-8), learned counsel for the petitioners contended with some amount of vehemence that the respondents were legally required to conduct the election of the Board of Directors, in accordance with Section 26 of the Act, "Appendix "C"" of the Relevant Rules, Bye-Laws and guidelines dated 11.12.2000 issued by the Registrar, for election to the Managing Committee of the Cooperative Societies in Punjab and as per already prepared zonal list of voters (Annexure P-I). The argument is that neither the previous Board, nor the Joint/Deputy Registrars/Returning Officer were legally competent to prepare a fresh zonal list of voters (Annexure P-3), without following Rule 12 and the guidelines, without approval/direction of the Registrar. The argument further proceeds that the objection petition (Annexure P-5) filed by petitioner Nos.2 and 3, in pursuance of the election notice dated 07.02.2011 (Annexure P-4), in a way, was accepted by the Joint Registrar, by means of letter dated 10.03.2011 (Annexure P-6), but the same was again illegally reviewed in a haste by him(Joint Registrar), through the medium of impugned order dated 31.03.2011 (Annexure P-8). The argument is that the preparation of new zonal list of voters (Annexure P-3) and all subsequent proceedings arising thereto, are illegal, arbitrary and against the statutory provisions, relevant Rules, Bye-Laws and the guidelines.

11. On the contrary, hailing the impugned order (Annexure P-8), learned counsel for the respondents urged that 38 Cooperative Societies were illegally included, number of societies in zone Nos.8 and 9 were under winding-up process and, since, other societies were formed during the previous term of the Board, so, the respondent-Bank has rightly passed the resolution, to convene the general body meeting, to amend its Bye Law No. 3, so as to include and cover the Jalalabad Tehsil in the operation of the Bank. Accordingly, a fresh zonal list of voters (Annexure P-3) was prepared, in accordance with the statutory provisions, no fault could be traced in it(Annexure P-3) and no interference is warranted in this relevant connection.

12. After hearing the learned counsel for the parties, going through the legal provisions and the material brought on record with their valuable assistance and after deep consideration of the entire matter, to my mind, the instant writ petition deserves to be accepted in this context.

13. As is evident from the record that since, the previous term of the Board of Directors was to expire on 07.10.2010, so, the respondent-Bank passed the resolution/agenda bearing No. 12 dated 05.10.2010 (Annexure P-2) and resolved to prepare a fresh zonal list of voters, for the reasons mentioned therein. Consequently, the fresh zonal list of voters (Annexure P-3) was prepared in this relevant behalf. It is not a matter of dispute that the Joint Registrar issued election notice (Annexure P-4) and in pursuance thereof, petitioner Nos.2 and 3 filed the objection petition (Annexure P-5). He(Joint Registrar) wrote a letter dated 10.03.2011 (Annexure P-6), informing the Deputy Registrar that the zones should be framed by strictly following the instructions of the Act, "Appendix "C"" of the Relevant Rules, Bye-Laws and the election guidelines. The Deputy Registrar sent the zonal list of the voters in original to the Assistant Registrar, Cooperative Societies, with the direction that the zones should be framed by keeping in view the instructions, contained in the Act, "Appendix "C"" of the Relevant Rules, Bye Laws and the election guidelines and the same be again sent to his office, for further necessary action, by means of order dated 14.03.2011. In the same manner, the Assistant Registrar, Cooperative Societies, sent the fresh original zonal list of voters to the District Manager of the respondent-Bank, by virtue of order dated 22.03.2011. Again, the District Manager wrote a letter dated 31.03.2011 (Annexure P-7) to the Joint Registrar, intimating that the zones were framed, in accordance with law.

14. Strange enough, the Joint Registrar on the same very day, by way of impugned order dated 31.03.2011 (Annexure P-8), without verifying the indicated relevant facts, agreed with the new zones framed for the election of the Board in a routine manner and without any legal basis.

15. Such, thus, being the position on record, now the short and significant question, though important, that arises for determination in this case, is as to whether the Joint/Deputy Registrars, were competent to approve the new zonal list of voters (Annexure P-3), for the conduct of indicated election of the Board of

Directors of the respondent-Bank or not?

16. Having regard to the rival contentions of the learned counsel for the parties, to me, the obvious answer is in the negative. The Joint/Deputy Registrars were not legally competent to change the zonal list of voters, without following the provisions of the Act, Relevant Rules, Bye-Law and the election guidelines.

17. What is not disputed here is that the elections of the members of the respondent-Bank, have to be conducted in the manner prescribed under the Rules. Sequently, Rule 23 of the Relevant Rules postulates that the members of the Board shall be elected in accordance with the Rules given in "Appendix "C" Similarly, Rule 4 of the "Appendix "C" posits that the Manager shall draw a detailed programme of elections and send the same to the Registrar for approval and for the appointment of Returning Officer for conducting the election. According to Sub-Rule (2) of this Rule, the zonal list of voters shall be prepared, if necessary, by the Manager in accordance with the directions issued by the Registrar from time to time.

18. Likewise, Rule 12 of "Appendix "C" "envisages that the Registrar may issue such instructions as may be necessary for the purpose of drawing of election programme, filing of nomination papers, withdrawal of nomination papers, allotment of symbols, manner of voting, counting and other relevant matter to facilitate the holding of elections in respect of a society or a class of societies.

19. In order to supplement the election process, the Registrar has issued guidelines dated 11.12.2000, for election to the Managing Committee of the Cooperative Societies in Punjab. As per guideline 4.0(pertaining to formation of zones), the Managing Committee should propose such zones as it considers appropriate, to the Registrar for his approval. It should keep in view following parameters for formation of zones; (i) contiguity and compactness of area; (ii) proportionate distribution of members having voting rights; and norms for formation of zones, if any, prescribed as per Bye Laws of the society. The Chief Executive Officer of such society was required to submit a list of proposed zones to the Registrar at least 60 days before the expiry of tenure of the Managing Committee and if there is an Administrator, then it is incumbent upon him (Administrator) to submit such a proposal as early as possible.

20. As per guideline 4.2, on receipt of the list of zones, the Registrar or any other officer authorized by him should invite objections in this regard in the manner prescribed therein. According to guideline 4.5, the Registrar should after providing an opportunity of hearing to all those who submit objections, decide, finalize and approve the zones with or without modifications. He should pass a speaking order in this behalf. The zones so approved by the Registrar should remain valid for the purpose of elections to the Managing Committee of the Cooperative Society for at least ten years from the date of formation, except in cases where addition or deletion, if any, in the opinion of the Registrar is necessary because of registration of new societies, liquidation of existing

societies, enrollment of new members and/or deletion of existing members. The zones approved by the Registrar are final and no appeal lies against such an order of the Registrar. Guidelines 5.0 and 6.0 further provide the procedure for preparation of zone-wise list of voters and finalization of election programme in this respect.

21. A conjoint reading of these provisions would reveal that where addition or deletion, if any, in the opinion of the Registrar, is necessary because of registration of new societies, liquidation of existing societies, enrollment of new members and/or deletion of existing members, is essential, then, he(Registrar) may issue direction and approve the new zonal list of voters, as contemplated under Rule 4(2) and Rule 12 of "Appendix "C"" of the Relevant Rules. Neither, the Joint Registrar, nor the Deputy Registrar, were independently competent, nor have the power to approve the new zonal list of voters, without following the legal procedure. Moreover, the zonal list cannot be approved even by the Registrar, without following the mandatory provisions, as discussed hereinabove. Therefore, to me, the approval of new zonal list of voters by the Joint Registrar, through the medium of impugned order dated 31.03.2011 (Annexure P-8), is not only arbitrary and illegal, but against the statutory provisions of the Act, Relevant Rules, Bye-Laws and election guidelines and the impugned order (Annexure P-8) cannot legally be maintained in the obtaining circumstances of the case.

22. In the light of aforesaid reasons, the instant writ petition is accepted. The impugned order dated 31.03.2011 (Annexure P-8) is hereby set aside. Keeping in view the nature of litigation and urgency of the matter, respondent Nos.3 and 4 are directed to refer the entire case/material of preparation of fresh zonal list of voters, to the Registrar, Cooperative Societies-respondent No. 2, within a period of one week from the date of receipt of the certified copy of this order. Then, respondent No. 2 will decide the matter of finalization/approval of fresh zonal list of the voters, in view of the aforesaid observations and in accordance with law, as depicted hereinabove, within a period of two weeks thereafter. The respondents are directed to complete the entire indicated process in this relevant connection, within a period of one month.

Copy of the order be given dasti to the learned counsel for the parties under the signatures of the Reader attached to this Court.