
(2000) 02 P&H CK 0059

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 135 of 2000 and Civil Miscellaneous No. 258 of 2000

Raman Sharma

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 22-02-2000

Acts Referred:

Citation : AIR 2000 P&H 268 : (2000) 126 PLR 156

Hon'ble Judges : N.K. Sud, J;N.K. Sodhi, J

Bench : Division Bench

Advocate : Y.S. Bajwa, for the Appellant;

Final Decision : Allowed

Judgement

N.K. Sodhi, J.—Elections to the Board of Directors of the Pathankot Hindu Urban Co-operative Bank Ltd., Pathankot (for short the Bank) were held on 8-6-1998 in which seven Directors were elected including the petitioner. A meeting of the Board of Directors of the Bank was held on 24-6-1998 and one of the items on the agenda was to co-opt two Directors. Respondents Nos. 4 and 5 were co-opted. Feeling aggrieved by their co-option, the petitioner challenged the same before the Registrar, Co-operative Societies, Punjab u/s 69 of the Punjab Cooperative Societies Act, 1961 (hereinafter called the Act) alleging that they were ineligible to be co-opted as they had already served as Directors of the Bank for a period of eleven years without any gap of one term as required under the Act, it was contended on behalf of the petitioner that in view of the provisions contained in Sub-section (2) of Section 26-B of the Act, respondents Nos. 4 and 5 could not be co-opted on the Board as under Rule 23-A of the Punjab Co-operative Societies Rules, 1963 (for short the Rules) read with Section 26-A, a co-opted Director should fulfil the conditions and qualifications prescribed for an elected Director of the Board. The Registrar dismissed the revision petition holding that the co-option of Respondents Nos. 4 and 5 had been made under Bye-law 22 of the Bye-laws of the Bank and did not attract the disqualifications

prescribed by the Act. It is against this order that the present petition has been filed under Article 226 of the Constitution seeking a writ of certiorari to quash the order passed by the Registrar dismissing the revision petition.

2. We have heard counsel for the petitioner.

3. The only argument advanced before us is that Sub-section (2) of Section 26-B of the Act debars Respondents Nos. 4 and 5 from being co-opted as they had already served as Directors for a period of eleven years without any gap of one term. He also referred to the provisions of Rule 23-A of the Rules to contend that Respondents Nos. 4 and 5 do not belong to any scheduled caste or scheduled tribe or backward class nor are they from amongst members who hold, as landowner or tenant or as both not more than two standard acres of agricultural land and, therefore, they could not be co-opted. Before we deal with the contentions advanced by the learned counsel for the petitioner, it is necessary to refer to the provisions of Section 26A, Sub-section (2) of Section 26B of the Act and Rule 23A of the Rules which are reproduced hereunder for facility of reference:--

"Section 26A.

Co-option of members.-- (1) Notwithstanding anything in Section 26, the Registrar may, by an order in writing, direct the committee of any co-operative society or any class of co-operative societies to co-opt in the prescribed manner for serving on the committee such number of members not exceeding two as may be specified in the direction.

(2) Where a direction is issued under subsection (1), co-option shall be made from amongst members of the co-operative society belonging to scheduled castes, scheduled tribes or backward classes or from amongst members who as landowner or tenant or as both do not hold more than the prescribed area of agricultural land and fulfil the prescribed conditions.

(3) Members co-opted under Sub-section (2) for serving on the committee of a cooperative society shall have the same rights and privileges and shall be subject to the same liabilities as elected members of the committee of that society.

Section 26B.

Restrictions on membership etc.-

(1)xxxxxxx (2) No person shall be eligible for being elected to the committee of any co-operative society after he has served on the committee of that co-operative society for two continuous terms, unless a period of not less than one term has expired since he last so served.

Explanation.-- For the purpose of computing the period of two terms under subsection (2), if a person ceased to serve on the committee on account of resignation tendered by him, he shall be deemed to have so served for the full term in which resignation was tendered.

Rule 23-A.

The manner of co-option, the area of agricultural land to be held and the conditions required to be fulfilled for the purpose of Section 26-A. [Sections 85 (xd) and 26-A].

(1) The Registrar in his direction u/s 26-A shall intimate the number and class of persons to be co-opted in the committee of a co-operative society.

(2) The committee of a co-operative society, to which a direction u/s 26-A has been issued by the Registrar, shall immediately after the receipt of such direction, call a meeting in accordance with these rules and the bye-laws.

(3) The committee shall then co-opt the number of members specified in the direction issued by the Registrar from amongst the members belonging to scheduled castes or scheduled tribes or backward classes or from amongst members who hold, as landowner or tenant or as both, not more than two standard acres of agricultural land:

Provided that the members so co-opted fulfil the conditions and qualifications prescribed for the elected members of the committee in these rules or in the bye-laws of such a co-operative society.

Note:-- "Standard Acre" for the purposes of this rule shall have the same meaning as given in Punjab Security of Land Tenures Act, 1953 (Act 10 of 1953)."

A reading of the aforesaid provisions would make it clear that where the Registrar by an order directs the committee of any co-operative society to co-opt such number of members not exceeding two then co-option shall be made from amongst members of the society belonging to scheduled caste, scheduled tribes or backward classes or from amongst members who as land owner or tenant or as both do not hold more than the prescribed area of agricultural land and fulfil the prescribed conditions. It is also clear that a member co-opted u/s 26A of the Act for serving on the committee has the same rights and privileges and is subject to the same liabilities as elected members of the committee of that society. Sub-section (2) of Section 26B of the Act makes a person ineligible for being elected to the committee of any co-operative society after he has served on the committee of that society for two continuous terms unless a period of not less than one term has expired since he last so served. This provision, however, does not deal with co-option of members and prescribes a disqualification for an elected member only. Rule 23-A of the Rules then prescribes the manner in which members can be co-opted u/s 26A of the Act and prescribes the same qualifications as are prescribed u/s 26A of the Act. In addition to the power of co-option u/s 26A read with Rule 23-A of the Rules. Bye-laws of the Bank also empower the Board of Directors to co-opt not more than two Directors. Clause (iii) of Bye-law 22 of the Bye-laws of the Bank reads thus :--

"(iii) In addition to elected or nominated Directors, it shall be competent for the Board to co-opt not more than 2 Directors from amongst the persons connected

with small scale or cottage industries, economists finance and Banking experts as may be conducive to the successful conduct of business of the Bank. The tenure of such co-opted members shall be at the pleasure of the Board and their motion in the meeting shall be recommendatory."

It is clear from the aforesaid Bye-law that the Board of Directors can also co-opt not more than two Directors from amongst the! persons connected with small scale or cottage industries, economists, finance and banking experts as may be conducive to the successful conduct of business of the Bank. The tenure of such co-opted members is at the pleasure of the Board and their motion in the meeting is recommendatory. In other words, they do not enjoy the same rights and privileges as are enjoyed by the elected members or even the members co-opted u/s 26A of the Act. In the case before us, respondents 4 and 5 have been co-opted under Bye-law 22 of the Bye-laws of the Bank. The co-option made under the Act and the Rules is distinct from the one made under the Bye-laws and the rights and privileges enjoyed by the members co-opted u/s 26A of the Act are different from those available to members co-opted under the Bye-laws.

4. In the result, it has to be held that the disqualifications which are attracted to the co-option u/s 2G-A of the Act read with Rule 23-A of the Rules are not attracted to the co-option made under the Bye-laws. In this view of the matter, we have no hesitation in rejecting the contentions advanced by the learned counsel for the petitioner. There is, thus, no merit in the writ petition and the same stands dismissed.