
(1978) 11 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1315 of 1977

Ranbir Singh

APPELLANT

Vs

The Cane Commissioner and Others

RESPONDENT

Date of Decision : 22-11-1978

Acts Referred:

Companies Act, 1956 — Section 617
Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 — Section 2(2)

Citation : (1979) 2 ILR (P&H) 181

Hon'ble Judges : M.R. Sharma, J

Bench : Single Bench

Advocate : Kuldip Singh, for the Appellant; Balwant Singh Malik, for A.G., for the Respondent

Final Decision : Allowed

Judgement

M.R. Sharma, J.—The Mustafabad Cane Growers Co-operative Society Limited, Mustafabad, Respondent No. 3 (hereinafter referred to as the "Society") is a Society registered under the Punjab Co-operative Societies Act, 1961 (hereinafter called the "Act"). This Society advertised the post of a Secretary in the pay-scale of Rs. 225--430 and the said advertisement appeared in the "Daily National Herald" of January 8, 1977. The Petitioner applied to the Society for this post and after interview he was selected for the same. By-law 27 of the by-laws governing the Society lays down that the Managing Committee of the Society shall appoint a suitable person as Secretary, subject to the approval of the Registrar. The Petitioner was tentatively appointed to the post and his case was referred to the Cane Commissioner exercising the powers of the Registrar under the Act for accord of the approval. The Cane Commissioner did not accord the approval to the appointment of the Petitioner on the ground that his name had not been recommended by the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (hereinafter referred to as the "1959 Act"). The Petitioner has filed the instant petition challenging the non-accord of the approval

by the Cane Commissioner to his appointment to the post of Secretary of the Society on the ground that the 1959 Act was not attracted to the facts of the case. Sub-section 2(i) of Section 2 of this Act reads as follows:

2 (f) "establishment in public sector" means an establishment owned, controlled or managed by:

- (1) the Government or a department of the Government ;
- (2) a Government company as defined in Section 617 of the Companies Act, 1956 ;
- (3) a Corporation (including a co-operative society) established by or under a Central, Provincial or State Act, which is owned, controlled or managed by the Government ;
- (4) a local authority.

2. The Society does fall within the ambit and scope of word "corporation" but it is to be seen whether it is owned, controlled and managed by the Government or not. It is not disputed that the Society was registered as a public sector institution and is managed by a Managing Committee elected by its members in accordance with the provisions of the Act. The difficulty has arisen on account of the word "controlled" used in Sub-clause (8) of Clause (f) of Sub-section (2) of Section 2 of 1959 Act. Can it be said that each and every Co-operative Society registered under the Act is in substance controlled by the State Government. Mr. Malik, learned Counsel for the Respondents, has drawn my attention to Section 27 of the Act which enables the Registrar to supersede the Managing Committee of a Co-operative Society. On this basis it has been argued by him that a Co-operative Society should be deemed to be a corporation controlled by the State Government within the meaning of Sub-clause (3) of Clause (f) of Sub-section (2) of Section 2 of the 1959 Act.

3. After hearing the learned Counsel for the parties, am of the view that the meaning which Mr. Malik assigns to word "control" appearing in the aforementioned 1959 Act is not the correct meaning to be assigned to this word. The Society in the instant case is, no doubt, established under a State Act but it cannot be said to be owned, controlled or managed by the State Government. It is, no doubt, true that the Registrar is competent to register a Co-operative Society on the basis of approved by-laws and is invested with the jurisdiction to supersede its Managing Committee if such a Committee acts in contravention of the provisions of the Act. It is also true that the Registrar is invested with the powers to refer the disputes between two members of a Society for arbitration, to hear appeals against the awards and his decision is subject to the exercise of revisional jurisdiction by the State Government. All these provisions, when collectively considered, only go to show that the Registrar is essentially invested with the jurisdiction to see that a Co-operative Society is properly registered and works on co-operative principles in accordance with the provisions of the Act.

Within the specified field of its activities the Managing Committee of a Cooperative Society has the unbridled discretion to conduct its business for which it has been registered. It would be useful to draw on the analogy of a Company registered under the Indian Companies Act for understanding the meaning of the words "owned, controlled or managed by the Government". Under the Indian Companies Act also it is the Registrar of Companies who is responsible for registering a Company and for seeing that the Company conducts its business strictly in accordance with the provisions of the Act under which it is incorporated. By exercising his statutory powers, the Registrar of Companies cannot be said to be the Controller of a Private Limited Company. Such a Company has also unbridled discretion to transact business in accordance with the Articles of Association. The words "owned, controlled or managed by the Government" essentially connote that the Government should have a majority control in the Managing Committee of a Society or a Company. In that behalf it would be useful to refer to Section 26 of the Act wherein it has been specifically provided that where the Government has subscribed the share capital of a Co-operative Society to a certain extent or has advanced loans to it of a particular category it would have the right to nominate its own Chairman or Managing Director of such a Society. In case of those Co-operative Societies, it might be said that the Government does control them. But where the Managing Committee of a Society is elected only by its own members such a Society cannot be said to be under the control of the Government within the meaning of Sub-section 2(f) of Section 2 of the 1959 Act.

4. Faced with this situation Mr. Malik drew my attention to Section 85(xxxviii) of the Act, which is reproduced below:

qualifications for members of the committee and employees of a society or class of societies and the conditions of service subject to which persons may be employed by society.

5. The learned Counsel argued that the word qualifications of its employees used in the above provisions shall be that the Government could frame a rule laying down that a particular class of the servants of the Society should be recruited through the employment exchange only. The word "qualification" has different shades of meaning in Shorter Oxford English Dictionary. It is defined as under:

Qualification.--The action of qualifying the condition or, fact of being qualified; that which qualifies 1. Modification, limitation, restriction; a modifying or limiting element or circumstance. 2. The distinctive quality of a person or thing; condition, character, nature.

6. Mr. Malik, counsel for the Respondent, has argued that if the word "qualification" means placing of a limitation or a restriction then it would be open to the State Government to place a restriction that Co-operative Societies should employ only those person whose names are forwarded by the Employment Exchange. I am, however, not inclined to accept this argument. The word

"qualification" appearing in the afore-mentioned rule signifies the personal attainment of a candidate. It is his distinctive quality to hold a particular post. If a candidate for a post routes his application through an Employment Exchange that does not add to his personal attainments. Even otherwise the Employment Exchange normally sorts out the names of various Applicants for posts and recommends them to prospective employers on the basis of qualification which inhere in them or which they have affirmed. The mere routing of the application of a person through a particular channel does not add to his capacity in any manner. For all these reasons am of the considered view that the word "qualification" used in Section 85(xxxviii) of the Act cannot be given that meaning which according to the submission of Mr. Malik be assigned to it. Once it is so held it becomes obvious that it is not open to the Cane Commissioner to insist that the name of the Petitioner should have been forwarded to the Society by an Employment Exchange. He has advanced no other reason for withholding the approval of the name of the Petitioner.

7. In the circumstances, allow this petition and direct the Cane Commissioner to reconsider the name of the Petitioner for appointment to the post of Secretary of the Society in accordance with law regardless of the fact that his name has not been forwarded by the Employment Exchange. The petition is allowed to the extent indicated above, with no order as to costs.