
(1981) 05 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 2284 of 1980

Sardar Mohd and Others

APPELLANT

Vs

Registrar Co-Operative Societies and Others

RESPONDENT

Date of Decision : 11-05-1981

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1981) 3 ILR (P&H) 333

Hon'ble Judges : J.M. Tandon, J

Bench : Single Bench

Advocate : Prem Singh, for the Appellant; Nirmal Yadav, AAG and Gobinder Singh Sandhu, for the Respondent

Judgement

J.M. Tandon, J.—The election of 10 Directors of the Managing Committee of the Gurgaon Central Co-operative Bank Ltd., Gurgaon (hereinafter the Central Bank) was fixed for June 15, 1980. One Director was to be elected from each of the 10 zones. All the six Petitioners were authorised by their respective Primary Member Societies as detailed in paragraph No. 4 of the petition) to take part in the said election. The election was postponed from June 15, 1980 to July 1, 1980. The nomination papers were required to be filed on May 30, 1980. According to the Petitioners their rival nominees withdrew on July 3, 1980, with the result that they were entitled to be declared elected in terms of Rule 11 of the Rules of Election to the Committee of Co-operative Societies (hereinafter the Rules). They were not so declared. The Returning Officer cancelled the election proceedings vide order dated July 3, 1980 (annexure P. 7) which reads.--

As per telephonic message received from Head Quarters today on 3rd July, 1980 all the proceedings of the election of the Board of Directors of the Gurgaon Central Co-operative Bank Limited, Gurgaon, have been cancelled. It is, therefore notified for information of all concerned.

2. The Petitioners have consequently filed the present writ petition praying that the order annexure P. 5 having been passed u/s 26(9) of the Punjab Co-operative

Societies, Act (hereinafter the Act) be be quashed. Rajdar Khan and Mohd. Illayias Respondents Nos. 5 and 6 were appointed Administrators in addition to the already appointed administrators of the Central Bank by way of interim arrangement. On their request they were added as Respondents in the writ petition. This writ petition has been contested by them as also by the State.

3. The order annexure P-5 was passed by the Returning Officer on on receiving telephonic message from the headquarters. The order passed by the government on the basis of which the telephonic message given by the headquarters is annexure R. 1 of the same date. It reads.--

Whereas the election of the Managing Committee of the Gurgaon Central Co-operative Bank Limited, Gurgaon, was proposed to be held in accordance with Election Rules contained in appendix "C" to the. Punjab Co-operative Societies Rules, 1963, the voters list was finalised by the Returning Officer in accordance with Rule 5 of the Rules *ibid*. The said list prepared by the Returning Officer on the basis of resolution received from the member co-operative societies under Rule 5.4 of the Election Rules was considered as final as rules do not provide for inviting objections on the list. A number of complaints were received about irregularities committed in the preparation of this list. The enquiry conducted into the matter revealed that the Returning Officer has accepted wrong, non-genuine and fictitious resolutions on behalf of the member co-operative societies and has thus prepared a wrong voter list.

The Government is satisfied that election of the Managing Committee of the Gurgaon Central Co-operative Bank Ltd., Gurgaon and other appex Co-operative Societies cannot be fair and proper unless the rules on the subject are amended.

Now, therefore, the Governor of Haryana, in exercise of the powers vested in him u/s 26.9 of the Punjab Cooperative Societies Act, 1961 (as applicable to the State of Haryana) is pleased to cancel the current election proceedings of the said bank and all other appex co-operative societies and order fresh elections, after the proposed amendment in the rules is made.

4. The main contention of the learned Counsel for the Petitioners is that Section 26(9) of the Act is ultra-vires the constitution inasmuch as it confers arbitrary and unguided power upon the government to undo any election of the members of the Committee of a co-operative society already held or in the process of being held without affording an opportunity to the effected parties.

Section 26(9) of the Act reads.--

Where the Government is satisfied that the election of members of the Committee of a Co-operative Society has not been held, or cannot be held in accordance with the provisions of the Act or the rules made thereunder, or the bye-laws of the society, it may, for the reasons to be recorded in writing, order fresh election.

5. Section 26(9) of the Act Can be invoked where the election of members of the

Committee of the co-operative society has already been held or is in the process of being held. Should the Government be satisfied that the election of the members of the committee already held or in the process of being held has not been held or cannot be held in accordance with law it can cancel the election or the proceedings as the case may be and order fresh election. This sub-section does not provide for allowing an opportunity to be heard to the adversely affected parties before passing an order thereunder. An order under this sub-section when passed would affect some parties adversely. The power conferred on the government under this sub-section to pass an order affecting some parties adversely without affording them a reasonable opportunity being outright arbitrary is violative of Article 14 of the Constitution. Section 26(9) of the Act is thus liable to be struck down as unconstitutional.

6. The learned Counsel for the Petitioners has argued that in order annexure R. 1 no foundation has been laid for exercising the power conferred u/s 26(9) of the Act. I am in agreement with this contention as well. It is evident from the order (R. 1) reproduced above that the proceedings in the matter of conducting election of members of the committee of the Central Bank were not in conflict with any provision of the Act or the rules made thereunder or the bye-laws. The order (R. 1) high-lights that there is a lacuna in the rules in as much as it does not provide for inviting objections against the resolution received from the member co-operative societies under Rule 5(4) of the Election Rules. Assuming for the sake of arguments that there exists such a lacuna, the elections already held or in the process of being held cannot be stamped violative of any provision of the Act, Rules or the bye-laws. Under these circumstances, no foundation having been laid for the exercise of power u/s 26(9) of the Act, the order annexure R. 1 is liable to be set aside on this ground as well.

7. During the pendency of this writ petition on December 5, 1980. The Registrar appointed 11 persons, including six Petitioners, as Administrators under Sub-section (3)(a) of Section 26-A of the Act, who were required to perform the functions of the Managing Committee by way of interim arrangement in terms of Section 27 of the Act. On January 27, 1981, the Registrar further appointed Rajdar Khan and Mohd. Jlyias Respondent Nos. 5 and 6 respectively as Administrators, thus raising the total to 13. The Petitioners obtained an interim order dated February 25, 1981, from this Court staying the appointment of Respondents Nos. 5 and 6 as Administrators till the disposal of the writ petition. In the order dated February 25, 1981 it was pointed that prima facie the number of Administrators appointed under Sub-section (3)(a) of Section 26-A of the Act could not exceed 11. This point has been argued by the learned Counsel for the parties at length and I am of the opinion that the maximum number of administrators to be appointed under Sub-section (3)(a) of Section 26-A of the act is not limited to II. The Registrar can constitute a Managing Committee under Sub-section (1) of Section 26-A of the Act by way of an interim arrangement. It is specifically provided under Sub-section (1) of Section 26-A that the number of members of such a Committee shall not exceed 11. No such limitation regarding

the number is prescribed under Sub-section (3)(a) of Section 26-A of the Act. It would, therefore, be not correct to hold that the number of Administrators appointed under Sub-section (3)(a) of Section 26-A of the Act by the Registrar cannot exceed 11.

8. In view of the discussion above, I hold that Section 26(9) of the Act is bad being violative of Article 14 of the Constitution. The order annexure P. 5 (R. 1) passed in exercise of the powers conferred u/s 26(9) of the Act is consequently quashed. The Returning Officer will now proceed to complete the process of the election of the Managing Committee of the Central Bank. No order as to costs.