(1994) 04 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 8610 of 1993

Satwant Singh and others APPELLANT

Vs

State of Punjab and others RESPONDENT

Date of Decision : 11-04-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 31

Citation : AIR 1994 P&H 274 : (1994) 107 PLR 493

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : H.S. Mattewal, Ms. Gurveen Kaur, D.V. Sharma and Balwinder Singh, for the Appellant; G.K. Chatrath, General, A.G. Masih, A.A.G., G.S. Grewal P.S. Kahlon, P.S. Patwalia and Nimit Kumar, for the Respondent

Judgement

1. This order shall dispose of Civil Writ Petition Nos. 8610, 8621 and 8800 of 1993 as common questions of law and facts are involved therein. The facts have, however, been extracted from Civil Writ Petition No. 8610 of 1993.

2. Satwant Singh Vairon Namgal and others through present petition filed by them under Article 226 of the Constitution of India seek writ in the nature of eertiorari so as to quash notice dated July 8, 1993 as also letter of the even date issued by the Registrar, Co. Operative societies, Punjab and Milkfed, Annexure P 11 and P 12, as also writ in the nature of mandamus directing respondent Nos. 1 to 3 to hold elections to the District Co-operative Milk Producers'' Union Ltd. in the State of Punjab then to hold elections to the Punjab State Co-operative Milk Producers: Federation Limited, Chandigarh and thereafter to hold election of the Chairman of the Milkfed. For the aforesaid twin reliefs as it is necessary to ask for writ in the nature of eertiorari so as to quash bye-laws 21.1 and 22.0 of the Punjab State Co-operative Milk Producers'' Union Limited (Milfed) being ultravires the provisions of Section 19(2) read with Section 26(1B) of the Punjab Co-operative Societies Act as also Rules 25 and 26 of the Punjab State Co-operative Rules, 1963 the same too has been prayed for. The bye laws aforesaid are stated

to be contrary to the provisions of Section 26(1) read with Rule 23 of the Punjab Co-operative Societies Rules and Appendix ''C'' attached to the said Rules.

3. Before however the grounds on which the relief aforesaid has been asked for are noticed, it shall be useful to trace the facts as also the amendments under challenge.

4. The petitioners are either the Directors of the District Milk Producers Co-operative Unions or of the Punjab State Co-operative Milk Producers Federation Limited (hereinafter to be referred to as the Milkfed) or are the Ex-Directors of the these bodies. Milkfed is a Co-operative Society registered under the provisions of the Punjab Co-operative Societies Act, 1961 (hereinafter to be referred as Act of 1961. It is pleaded that the Government has deep and pervasive control over the affairs of the Milkfed. The authorised share capital as on 31-3-1992 was Rs. 10 crores out of which Rs. 2.89 crore is held by the District Milk Unions in which again the Government has its share. The Milkfed cannot create any post without the approval of the Registrar. The Government can nominate three Directors and in addition can nominate another one and appoint him as Managing Director, the Registrar can issue directives. There are 11 District Co-operative Milk Producers Unions in the State of Punjab. They are at Ropar. Hoshiarpur Jalandhar, Gurdaspur, Amritsar. Ferozepur. Faridkot. Bhatinda Sangrur Ludhiana and Patiala. The Primary Milk Producers Co-operative Societies Limited are the members of the Unions. Which are the members of the Milfged. It is pleaded that on the basis of the letter of undertaking signed by Dr. M. S. Gill, Additional Cheif Secretary to Government of Punjab and Secretary Cooperative Department, Punjab, Chandigarh and Miss A, Patel, Managing Director of the National Dairy Development Board, Anand, a statutory body incorporated by an Act of the Parliament of India, it was undertaken that the various Milk Co-operative Institutions will be governed by the elected Board of Directors. It was also undertaken by the Government that before the expiry of their term, the new Board of Directors will be constituted. Consequently it was undertaken that the elected Board of Directors would be established in all the Unions and the Federation on the expiry of the term of the existing nominated Board. A copy of the letter of undertaking aforesaid has been placed on the records of this case as Annexure P 1. Letter of undertaking was signed on account of the fact that the Registrar, Co-operative Societies Punjab Chandigarh was not holding elections in various Milk Unions as also in the Milkfed, It is pleaded that in the Milkfed elections were not held to the Board of Directors for over seven years. Therefore, the National Dairy Development Board undertook from the Punjab Government that the Unions as well as Milkfed will be managed by the elected Board of Directors. With this end in view, the Bye-laws of all the Unions as well as the Milkfed were framed which were approved and registered by the Registrar, Co-operative Societies Punjab Chandigarh. It is pleaded that as per Bye-taw 32, the Chairman and the Vice-Chairman once elected were to continue till the new Chairman and Vice-Chairman were elected. Bye-law 32 reads thus :--

"32. (a) The Board of Directors shall consist of 20 members as noted below.

(However, if government does not contribute towards share capital the BOD shall consist of 17 members)

(i) Twelve elected representatives of affiliated Societies.

(ii) Registrar Co-operative Societies or his nominee.

(iii) One nominee of the financing agency.

(iv) One nominee from the Federation to which the Union is affiliated.

(v) Managing Director of the Union, Ex-officio member/Secretary.

(vi) Three nominees of Government if Government has contribution.

(b) Nine members shall form the quorum of the Board of Directors.

(c) The elected Board of Directors shall hold office for a period of three years, but 1/3rd shall retire every year by rotation i.e. four from society members. Vacancy in the committee occurring during its term of office on account of death or any other cause shall be filled up in the manner prescribed.

(d) A member of the Board noininatcd by the Financing Agencies or Government shall not be entitled to contest the election of Chairman or Vice-Chairman of the Union.

(e) The Board of Directors shall elect the Chairman and the Vice-chairman every year at their first meeting after the annual general meeting and they shall be continued till new Chairman and Vice-Chairman is elected.

(f) It shall frame subsidiary election Rules consistent with the provisions of the Act Rules, Bye-laws for the election of the Board of Directors with the approval of the Registrar, Co-operative Societies.

(g) Provided that the first Board of Directors of Union including the Chairman and Vice-Chairman shall be nominated by the Registrar, Co-operative Societies for a period of one year. Provided further that in the case of Union already registered the first retirement of the aforesaid number of members of the Board of Directors shall take place immediately on the expiry of the period of one year from the date on which the amendment in the bye-laws of the Union providing for such retirement comes into force."

Bye-law 16.2 of the Milkfed is with regard to General Body of the Milkfed which has to consist of Chairman of each of the affiliated Milk Union. All the nominated members have to attend the meeting. Bye-laws 21.1 to 21.3 are with regard to the Board of Directors of the Milkfed. The said Bye-laws read as follows :--

21. Board of Directors.

21.1 The Board of Directors of the Federation shall be constituted in the following manner :

1. Eleven members to be elected out of the Chairman of the affiliated Milk Unions in accordance with the provisions of the Punjab Co-operative Societies Act and Rules framed thereunder on zonal basis.

2. Registrar, Co-operative Societies, Punjab.

3. One nominee of the State Government of the Government is a share holder.

4. One nominee of the National Dairy Development Board or his alternate.

5. The Managing Director of the Federation (Ex Officio).

The tenure of the Board of Directors shall be three years.

21.2 The elected members of the Board shall hold office for a period of 3 years and 1/3 members shall retire by rotation every year. The retiring members shall be eligible to contest elections. In the first and second year, the retirement shall be decided by draw of lots. However, during the tenure of the office an elected member on the Board of Directors if he or the society he represents has acted in a manner that causes a breach of provisions under these Bye-laws he shall cease to be a member on the Board, Vacancies arising thus shall be filled up by election for the remaining tenure.

21.3 The Chairman of the Board of Directors shall be elected every year from amongst the elected members for a period of one year. The Chairman shall continue to hold office till a new Chairman is elected as per the Bye-laws. All the members of the Board including the Chairman of the Federation shall be honorary and shall not draw any honorarium from the Fed. No post of Vice-Chairman shall be there on Board. The nominated members including the Managing Director of the Federation shall not vote and contest the election of the Chairman or the office bearers."

5. It is, thus pleaded that in accordance with the provisions contained in Bye-law 21.1, theelccted members of the Board of Directors of the Milkfed shall hold office for a period of three years and 1/3rd members shall retire by rotation every year. The retiring member shall be eligible to contest the elections. In the first and second year, the retirement has to be decided by draw of lots. According to Bye-law 21.3 of the Milkfed the Chairman of the Milkfed has to be elected every year from amongst the elected members for a period of one year. The Chairman is to continue till the new election is held. According to Section 26(1 B) of the Act of 1961, the term of office of the Board is three years. However, Section 26(1B) was amended on 16-11-1977 providing therein that the Milk Producers Co-operative Societies or the Society dealing in notified commodity can provide in its Bye-laws that as nearly as possible 1/3rd members of the Board shall retire every year in the manner laid down in the Bye-laws by draw of lots and in the event of such a provision being made, the vacancies caused as a result of retirement were to be filled in the prescribed manner. It is, thus,

pleaded that in accordance with the Bye-laws of the Unions as well as Milkfed, 1/3rd Directors were to retire every year and the election of the Directors who had retired was to be conducted in accordance with the provisions of the Act and the Rules. Thereafter the elected Directors were again to hold office for three years. In this way the Board of Directors of the Unions/Milkfed was External Body which was not to be dissolved. For example, 12 Directors were elected from zones No. 1 to 12 on 1-1-1986. These were to hold office for three years. But on 31-12-1986, four Director i.e. 1/3rd were to be retired by draw of lots and the election process was to be commenced 90 days before the expiry of its term as provided u/s 26(1C) of the Act. Those who were elected were to again hold office for three years upto 31-12-1990 and thereafter next year, out of eight, remaining four were to retire by draw of lots and similarly in the third year remaining four were to retire. In this way the vacancies so cuased were to be filled in and such Directors were to hold office for three years. Therefore there would not have thus, arisen any situation where any Administrator could have been appointed. This, it is pleaded was because of letter of undertaking given by the State of Punjab Annexure P1.

6. Section 26(1) of the Act of 1961 provides that the members of the Board of Directors of a society shall be elected in the manner prescribed. Rule 23 of the Rules of 1963 prescribes the manner as to how they are to be elected. Rule 23 reads thus :--

"23. Election of Committee. The members of the Committee of a co-operative society shall be elected in accordance with the rules given in Appendix ''C''.

7. Appendix''C'' deals with the holding of elections in Apex and Central Societies as also Primary Societies when held on zone basis. Part II only relates to holding of elections in the Primary co-operative Socie-ties in a special meeting and does not relate to the Central and Apex Societies. In view of Section 26 of the Act of 1961 and Rule 23 of the Rules of 1963 and Appendix ''C'' elections in the vacancies to be caused in the Milkfed are to be hold in accordance with those provisions. Vacancies it is pleaded could be caused on account of two factors. One because of retirement and the other because of ceasing to held office in view of bye-law 22A of the registered Bye-laws of the Milkfed.

Bye-law 22-A read as under :-

"22A. An elected member of the Board shall cease to hold office if he :--

(i) Ceases to be. the Chairman of the Milk Union represented by him; or

(ii) is declared insolvent; or

(iii) Becomes of unsound mind; or

(iv) Is convicted of any offence involving dishonesty or moral turpitude; or

(v) Holds any office of profit under the Federation or receives any honorarium; or

(vi) Resigns and his resignation is accepted by the Board of Directors of the Federation; or

(vii) Absents himself from three consecutive meetings of the Board without valid reasons; or

(viii) Acquires an interest, directly or indirectly in any contract with the Federation or in any sale or purchase made by the Federation privately or in auction; or

(ix) Incurs any other disqualification laid in the Act and the Rules which would have prevented him from seeking election had he incurred that disqualification before election.

Provided that any vacancy so caused shall be filled in through election in accordance with the provisions of the Act & Rules framed thereunder for the unexpired period of the tenure of the Board of Directors."

8. It is pleaded that provided the Bye-law 22 A (ix) shows that any vacancy caused has to be filled in through election in accordance with the provisions of the Act and the Rules framed thereunder for the unexpired period of the tenure of the Board of Directors.

9. The popular government was installed in the State of Punjab in February, 1992. Respondent No. 4 is the son of Shri Mohinder Singh Babehaheli, Ex. M.L.A. His father and Shri Beant Singh the present Chief Minister, Punjab were elected as M.L.As. together They were friendly to each other. Hence respondent No. 4 it is pleaded wields great political influence in the present Govern ment. It is because of his manipulation, it is pleaded that the amendment in the registered Bye-laws of the Milkfed, which is contrary to Rule 23 and Appendix ''C'' of the Rules, came about. The amendment was registered on 18- 1-1993. Exisieing Bye-law which has been reproduced above was amended so as to read asunder :--

"21.1 The Board of Directors of the Federation shall be constituted in the following manner :--

1. Elected Chairman of each affiliated Milk Union shall automatically become member of the Board of Directors of milkfed.

A person becomes member of the Board of Directors of the Milkfed by virtue of his being Chairman of the affiliated Milk Union represented by him, his Director-ship of Board of Directors of Milkfed shall terminate automatically the moment he ceases to hold the office of Chairman in his Milk Union and his successor shall automatically replace him in the Board of Directors of the Milkfed:

2. Registrar, Co-operative Societies Punjab or his nominee.

3. Three nominees of State Govt. so long as a Government is a Shareholder.

4. One nominee of the National Dairy Board or his nominee.

5. The Managing Director of the Federation (Ex-Officio).

10. In accordance with the amended Bye-law, elected Chairman of each affiliated Union shall automatically become member of the Board of Directors of the Milkfed. In other words, the election of the Board of Directors of the MiJkfed was done away with this amendment in the Bye-iaws. This amendment it is pleaded and so argued is contrary to the Act and the Rules and is liable to be set aside. Rule 25 of the Rules of 1963 provides disqualification for membership of the Committee and the same reads as under :--

"25. Disqualification for membership of Committee. -

No person shall be eligible for election as a member of the committee if -

(a) he is in default, of any co-operative society in respect of any sum due from him to the Co-operative Society or owes to any Cooperative Society an amount exceeding his maximum credit limit -

(b) he had directly or indirectly any interest in any contract to which the Cooperative Society is a party except in-transac-tions made with the Co-operative Society as a member in accordance with the objects of the Co-operative Society as stated in the bye-laws.

(c) he has at any time during a period of one year prior to the date of scrutiny of nomination papers engaged in any private business trade or profession of any description which is carried on by the Society;

(d) he has committed any offence involving dishonesty or moral turpitude during a period of filing nomination papers;

(e) he is subject to any of the restrictions contained in Rule 29;

(f) he has during a period of 12 months preceding the date of filing of nomination papers remained inactive as member or has been carrying on through agencies other than the Co-operative Society of which he is a member the same business as is being carried on by the Co-operative Society.

(g) he is a member of any Co-operative Society which has ceased to function or which has not fulfilled its objects as stated in its Bye-laws and has been included in the list of D Class Societies, maintained by the Registrar or is a member of a Co-operative Society which is under winding up process;

(gg) he has ceased to be a member of any Co-operative Society within a period of one year preceding the date of inclusion of such Co-operative Society in the list of D class Co-operative Societies maintained by the Registrar or the operation of order of winding up to such Co-operative Society u/s 57 of the Act.

Provided that nothing in clause (g) and (gg) shall be deemed to debar any person from seeking election if the Co-operative Society under winding up process of which he is a member is a Co-operative Society with limited or unlimited liability and that person discharges all his liablities including liability as a surety if any, in relation (o such a Cooperative Society within two months from the receipt of assessment orders.

(h) he has incurred any other disqualification laid down in the Bye-laws of the Society."

11. It is pleaded that even if a person sufferes from a disqualification as laid down under Rules 25, he still could be elected as a Director of the Milkfed automatically because of this amendment. For that reason it is pleaded and so argued, that the amended Bye-law is contrary to the Act and the Rules.

12. The elections to the Board of Directors of the Milkfed had taken place on 29-7-1991. The Returning Officer had declared 10 Directors out of 11 zones elected in accordance with Para 11, Part 1 of Appendix ''C'' of the Rules. Petitioner No. 1 was elected as a Director of the Milkfed for a period of three years in view of Section 26(1B) of the Act of 1961 but because of this amendment in the Byt-laws, respondent No. 4 has been automatically made a Director of the Milkfed. Even if petitioner No. 1 ceased to be Director in view of Bye Law 22-A then the competent authority was to pass an order after affording an opportunity of being heard to him. This is yet another ground which has been pressed into service to ask for quashing of the amended Bye-law 21.1. The case of other five Directors is also the same. All this was done it is further pleaded to elect respondent No. 4 as Chairman of the Milkfed. The meeting of the Board of Directors was fixed for 15-2-1993 to elect the Chairman in accordance with Bye-law 21.3 and the notice of the said meeting was issued on 29-1-1993. Nine Directors of the Milkfed out of 11 Directors had given in writing to the Managing Director that the view of Braham Parkash Committee (Planning Commission) ''Report as well as Gill Committee Report, the Punjab Government announced that in the coming session of the Assembly, the Punjab Co-operative Societies Act would be amended wherein it would be specifically provided that the term of Board of Directors would be increased from three years to five years. Consequently the Bye-laws of the Milkfed as also of Union were to be amended to bring them in conformity with the Act of 1961. Therefore, they requested that till the amendments in the Bye-laws were made the election of the Chairman could not be held. It was further submitted that the persent arrangement should continue till then. At the same time respondent No. 4 also approached the Registrar, Cooperative Societies for the postponement of the meeting of the Board of Directors to be held on 15-2-1993. The Managing Director of the Milkfed postponed the meeting for electing Chairman which was to be held on 15-2-1993. The reason for postponement was telephonic message from the Registrar to the effect that the Act of 1961 was being amended in the coming session of the Assembly. The other reason mentioned on the file was that nine Directors out of eleven had also prayed for the postponement of the meeting on the ground that the Bye-laws were also to be amended in view of the amendment in the Act as the Bye-laws were to be brought in conformity with the amendment in the Act. On account of these reasons, the meeting which was to

be held on 15-2-1993 was postponed. The reasons as reflected above are part of the file of the Milkfed and the copy of the same has not been supplied. However, notice for the cancellation of the meeting has been placed on the records as Annexure P6. The amendment in the Act was made vide Punjab Act N. 19 fo 1993 and the same was notified in Punjab Government Gazette (Extra) on 12-5-1993.

13. It is further pleaded that in view of the amendment the tenure of the Board of Directors after the commencement of the Act has been enhanced from three years to five years. However, a proviso was added that for retirement of l/3rd committee members every year, the term of office of that committee shall expire on the date on which retirement of any of its 1 / 3rd Directors may fall for the first time. Consequently respective Joint Registrars, Cooperative Societies had appointed Administrators in the District Union Ropar vide orders dated 15-6-1993. in Ludhiana on 5-7-1993. and in Hosiarpur on 18-6-1993. It is pleaded that election process has already started in Faridkot, Bhatinda and Ferozepur. The Board of Directors of Ludhiana Ropar and Hoshiarpur Unions had already authorised the Managing Directors to hold the elections according to the new Act. Therefore, it was in the interest of the Unions that the elections of the Chairman of the Milkfed should have been held only when the election process in the Unions was complete which were to elect their Chairman. The petitioners were candidates for election to the Board of Directors of the Unions and were interested in the election of the Chairman of the Milkfed. The petitioners it is pleaded are being denied their due right to participate in the election of Chairman of the Milkfed.

14. In the Gurdaspur Union it is stated which now respondent No. 4 wants to represent, 1/3rd retirement had taken place in December, 1992. The election of four directors should have been held before December, 1992. Since respondent No. 4 yields considerable influence he did not allow elections to take place and ultimately these were held on 27th February, 1993, in accordance with the election programme approved by the Joint Registrar on 5th February 1993. The notice of elections was published in the Daily Ajit on 9th Februrary, 1993. Harbans Singh, Deputy Registrar, Co-operative Societies was appoitned the returning officer to hold the elections. Nomination papers were filed for four zones. In two zones, only one candidate each filed nomination papers and, therefore, they were to be elected unopposed on 27th February, 1993 in accordance with the election programme. This declaration was to be made on 27th February, 1993 itself. However, respondent No. 4, it is pleaded, filed a civil suit for permanent injunction in the Court of Senior Sub Judge, Sangrur, on 26th February, 1993, and an order of injunction was obtained from Subordinate Judge 1st Class, Gurdaspur, restraining the Union as well as the returning officer from holding elections for the Board of Direciors of the Union on 27th February, 1993. No notice as required u/s 80(2), C.P.C. was given to the returning officer. The process of holding elections was, thus, thwarted. It is pleaded that in case the elections would have been held, all the four candidates who were opposed to

respondent No. 4 would have removed him as Chairman of the Gurdaspur Union also. If he could not have been the Chairman of the Gurdaspur Union then he was not even eligible to be director of the Milkfed.

15. The tenure of Bhatinda Union was to expire on 24th July, 1993 (evening). However, it is pleaded that in order to seek the votes of that Union for respondent No. 4, election was kept for 24th July, 1993. The tenure of Ferozepur Union was to expire on 26th July, 1993. Similarly the tenure of Amritsar Union was to expire on 19th July, 1993. In the background of facts as given above, it is pleaded that since the amendment in bye-law No. 21.1 is contrary to Act and the Rules, respondents No. 4 to 8 are not eligible t o hold office of the Director of Milkfed. They had no right to participate in the meeting of the Board of Directors. The prayer made in the petition as mentioned above is, thus, to issue a writ of certiorari so as to quash the impugned amendments referred to above as also letter Annexure P11 and notice Annex-ure P12. The petitioners also pray for a direction to respondents Nos. 2 and 3 to first hold elections to the Board of Directors of the Union and then to hold elections to the Board of Directors of the Milkfed and thereafter to elect Chairman of the Milkfed.

16. In Civil Writ Petition 8800 of 1993 (Balishter Singh v. State of Punjab) the prayer is also to quash bye-law 22.0. It is pleaded that the Fardikot Distt. Co.Op. Milk Producers'' Union is the member of the Milkfed and petitioner is representative of. Distt. Milk Producers'' Union in the Milkfed. Under Rules 26 and 25(H), disqualification of the member is to be seen and not of the representative. The society has not incurred any disqualification under Rule 26. Bye-law 22.0 provides for persoanl disqualification and, therefore, the same is contrary to Rules 26 and 25(H). Further, bye-law 22, it is pleaded and so argued, is contrary, to Sections 26(1B) and 19(2) of the Act which provide that term of the committee shall be three years while the bye-law aforesaid provides that only the Chairman can represent.

17. The cause of petitioners has been opposed and in the written statement that has been filed on behalf of respondent Nos. I and 2 by Shri B.C. Gupta, IAS, Registrar, Cooperative Societies, Punjab, it is pleaded that a similar writ petition bearing No. 6586 of 1993 was dismissed by this Court on June 2, 1993, wherein the following order was passed :--

"The petitioner who is a member of the Board of Directors of the Hosiarpur District Coop. Milk Producers Union Ltd., Hoshiar-pur, has moved this Court for declaring the proviso to sub-section I(B) of Section 26 of the Punjab Cooperative Societies (Amendment) Act, 1963 as unconsititutional and ultra vires the provisions of Articles 14 19(1)(g) and 31A(1) of the Constitution of India.

18. Section 26 of the Punjab Cooperative Societies Act, 1961, (for short, the Act) deals with election and nomination of members of the Committee of Coop. Societies. Sub-section (IB) of Rule 25 says that the term of office of a Committee shall be three years. The Act was amended by the Punjab Cooperative Socielies

(Amendment) Act, 1993, which came into force with effect from May 12, 1993. In the principal Act, for sub-section (IB) including the proviso and the explanation thereunder, the following sub-section (IB) was substituted :--

"The term of office of a Committee elected after the commencement of Punjab Co.op Societies (Amendment) Act, 1993, shall be five years from and date of its election; provided that the term of office of the existing committees shall remain three years;

Provided further that where in terms of the provisions of the bye-laws of the society, one-third members of its committee retire every year, the term of office of such a committee shall, after the commencement of the Punjab Cooperative Societies (Amendment) Act, 1993, expire on date of which retirement of any of its one-third members falls the first time."

The petitioner''s counsel challenged the vires of these provisions only on the ground that under the parent Act, the term of office of a committee of a society was three years but after the commencement of the amendment Act of 1993, it has been increased to five years from the date of its election, learned counsel submits that this increase in the term of office of [he committee of the society is arbitrary.

19. I find no merit in the submission made. It is not suggested that the amendment Act is not within the legislative competence of the State Legislature. It is also not suggested that the amended Act is hit by the vice of arbitrariness if the Legislature is competent to enact legislation, it is competent to amend the same. If the Legislature was competent to provide that the term of office of a committee of the Society elected under the provisions of the parent Act would be three years, the same Legislature is equally competent to amend the parent Act and says that the term of the office of a committee would be five years. The same is dismissed in limine."

20. It is further pleaded that another Civil Writ Petition bearing No. 8902 of 1993 was also dismissed by a Division Bench of this Court on 27th July, 1993, and the following order was passed :--

"Learned counsel for the petitioner contends that the election programme is not being approved. Learned counsel further contends that the respondents may be restrained from appointing administrator. We find no ground to interfere. The petitioner has got no fundamental right to continue in office after his term has expired. The writ petition is dismissed. However, the respondents are directed to hold the elections expeditiously, preferably within four months."

21. Petitioner No. 2, it is pleaded, is estopped from filing the present writ petition as he is a signatory to Resolution No. 2 dated 12th May, 1993, vide which the Board of Directors, Milk Union, Faridkot was dissolved with effect from 4th July, 1993. It is further pleaded that the competent authority under the law can amend the rules prospec-tively as welt as retrospectively. The procedure to hold

election vests power to issue notification on any person, so, right to contest, right to vote, right to dispute election though fundamental to democracy but are not fundamental in nature. So the petitioner cannot claim only one porcedure for holding the election, it is pleaded.

22. On merits, the case pleaded is that there is a letter of undertaking between the Addl. Chief Secretary, Punjab, and Managing Director of the National Dairy Development Board. Consequently, the elections were held for the Board in all the District Cooperative Milk Unions. However, the said letter of undertaking is not about the Punjab Cooperative Societies Act and the Rules. Before the amendment in the Punjab Cooperative Societies Act, there was a provision for retirement of 1/3rd members every year. Now the Punjab Co-operative Societies Act has been amended. The administrators have been appointed in the Milk Union for three months to make arrangements for the constitution of newly elected committees. Under the provisions of the Punjab Cooperative Societies Act, the adminsitrators have been appointed for three months. They have been directed to make arrangement for the election of the new commitee within three months, and, therefore, it cannot be said that the Registrar, Cooperative Societies, Punjab is not hodling the elections. Bye-law 32(c) is stated to be wrongly interpreted by the petitioners. A simple reading of the said bye-law, it is pleaded, would reveal that the election to the post of Chairman, Vice Chairman is to be held every year. In case there is dealy in the election of the new Chairman for any reason the sitting Chairman is to continue till the Board of Directors elect the new Chairman. The election of the Chairman or the Vice Chairman is to be made by the Board of Directors. In the present case, there is a different situation. The amendment in Section 26 of the Punjab Cooperative Societies Act has provided for a term of 5 years of the Board of Directors to be elected after the implementation of the said amendment. The Legislature in the amendment itself has provided that "where in terms of the provisions of the bye-laws of the Society, 1/3rd members of its Committee retire every year, the term of the office of such a committee shall, after the commencement of Punjab Cooperative Societies (Amendment) Act, 1993, expires on the date on which retirement of any of its 1 / 3rd members falls for the first time". Therefore, the term of the Board of Directors of the Unions has expired on the date of the first 1 / 3rd retirement. The amendment in bye-law 21 is stated to be within the provisions of the Punjab Cooperative Societies Act. The amendment in the bye-laws of the Milkfed was initiated, proposed and passed in the Board under the Chairmanship of Sh. Balishter Singh Mann. There are ony 11 Unions. The strength of the elected Board of Directors of the Milkfed is also eleven. It means that the chairman of each Milk Union has to become the member of the Board of Directors. The amendment in bye-law 21 was made in order to cut the unnecessary delay in procedure for the elected Chairman of the Milk Unions to come on the Board of the Milkfed. With regard to assertion of the petitioners based upon Rule 25, it is pleaded that if a person suffers from disqualification under Rule 25 then he can never be elected to become a member of the Board of

Milkfed for the reason that the moment he suffers the disqualification he will cease to be member/ Chairman or Vice Chairman of the Milk Union. In that situation, there would be no basis or occasion for him to become a member of the Board of Milkfed. Therefore, the bye-laws are not contrary to the Act and the Rules. In replying to the averments with regard to interference in the election by respondent No. 4 it is pleaded that petitioner No. I was elected as Director of the Milkfed and it is the Milk Union which has to be represented by its Chairman in the Board of Directors of Milkfed. When petitioner No. 1 was replaced by espondent no. 4 in the election of Chairman of Milk Union, the later was to represent the Union which is the member of the Milkfed. Therefore, it was not the individual but in his capacity as Chairman that petiioner No. 1 was on the Board of Directors of Milkfed. Therefore, the society or the Milk Union continues to be on the Board of Directors of Milkfed represented by its Chairman at any point of time.

23. Respondent No. 3 has filed separate written statement. By way of preliminary objections, it is pleaded that a writ against it is not maintainable as Milkfed is registered as a Society under the Punjab Cooperative Societies Act. It is State-level apex body of the Cooperative Milk Producers Societies at the village level and the District Cooperative Milk Producers Unions operating in the Districts. The members of the village level Societies are those persons who actually pour milk to the Society. The Presidents and other Committee members are elected by the members of the Cooperative Society at the village level while the Directors of the District-level Milk Producers Unions are elected out of the Presidents of the village level societies on zonal basis. They then choose a Chairman who is elected by the Directors from amongst themselves. All the Chairman of the District Cooperative Milk Producers Unions are Directors on the Board of Milkfed. Besides this, there is one nominee of the National Diary Development Board, one nominee of the Registrar Cooperative Societies Punjab. At present, there are three nominees of the State Government on the Board of Directors. The nominees of the State Government continue only as long as Milkfed retains share capital of Punjab Government or gives a guarantee for repayment of the loans. The only other member of the Board of Directors is the Managing Director who is appointed by the Board of Directors or the Government. The affairs of Milkfed are conducted by the Board of Directors and all decisions are taken by majority voting. As on 31-3-1993, the share capital of Milkfed was Rs. 676.76 lacs out of which Rs. 387.76 lacs has been contributed by member Unions and Rs. 289.00 lacs is the share capital of the Government and is returnable in fifteen years, with a moratorium period of five years, in ten equal yearly instalments. Milkfed is thus, stated to be neither ''State'' nor an instrumentality of the State. It is also pleaded that from a combined reading of bye-law 32 of the Milk Union and bye-law 21.1 of Milkfed, it is clear that each Milk Union is to elect Chairman and the Chairman of the Milk Unions were then eligible to be elected as members of the Board of Directors of Milkfed. All the eleven members are to be elected out of the Chairman of the affiliated Milk

Unions to the Board of Directors of Milkfed. There has always been 11 Chairmen and each of them used to become member of the Board of Milkfed in routine. Bye-law 21.1 provides that these 11 members have to be elected. The Milkfed has to undergo motion of holding the election every year or whenever the Chairman of a Milk Union was changed. However, the whole process of conducting the election was compeltely unnecessary and waste of money since each and every Chairman was, as a matter of right, to become a member of the Board of Directors of Milkfed. Since the elections of the Chairmen of the Milk Unions used to take place at various times in the year, each time when the Chairman of the Milk Union had to be brought on the Board of Milkfed, the Milkfed had to undergo the process of holding election in which one member could compete, only one member could be nominated and as a matter of right, one was to be elected. This resulted in waste of a lot of money and effort. Further, it was seen that by virtue of bye-law 22A(i), a member of the Board ceased to be a member, the moment he ceased to be the Chairman of the Miik Union and before the new Chairman could become a member of the Board, the election process takes three or four months. Consequently that particular Milk Union remains unrepresented in the Board of Directors for those 3 or 4 months despite the fact that it was a foregone conclusion that the new Chairman was to be a member of the Board, after going through the motion of election.

24. It is for the aforesaid reasons that the Board of Directors of the Milkfed took a conscious decision that since there were only 11 Milk Unions and only 11 Chairmen and all of them were to be members of the Board, in the present case the process of election be done away with and the bye-laws be amended to provide for that the elected Chairmen of the Unions would be members of the Board of Directors of milkfed automatically. Though the Board was itself fully authorised and empowered to seek the amendment withoul approval, yet this decision was put up before the general body of the Milkfed. After the general body of the Milkfed approved the said decision the same was sent to the Registrar, Cooperative Societies, for approval. The Registrar. Coopertive Societies, approved the decision on 6-1-1993. Thereafter, the said decision was got registered with the Assistant Registrar, Cooperative Societies, Ropar on 18-1-1993 and consequently, necessary amendment was made in the bye-laws of the Milkfed. It is pleaded that it would be clear from the facts given above that the said amendment in the bye-laws brings about no substantial change and, in fact, it is in the interest of the Union which gets representation on the Board and also in the interest of the Milkfed where the effori and money which was spent for conducting the election to elect the chairmen, the result of which was always a foregone conclusion could be avoided. It is further pleaded that the provisions contained in Section 26(1) of the Act of 1961 do not provide that each and every member of the coopertive society has to be elected. There is no embargo that an apex society cannot have on its Board the elected chairmen of the Central Society who are its members. In fact, these chairmen who have been elected and chosen by the central society to represent them are most apt and suited to

be on the Board of the apex society. Section 26 or any other section, it is pleaded, does not place any embargo on an apex society to provide that the elected Chairman of its affiliated central society shall automatically be the member of its Board. On merits as well, the defence is on the same lines as is in the preliminary objections.

25. Inasmuch as bye-law 21.1, as it now stands after amendment, is challened on the ground that the same is in sharp contrast to the provisions of Section 26(IB) of the Punjab State Co.op. Societies Act read with Rules 23 and 25 of the Punjab State Co-opertive Societies Rules, it shall be useful to immediately notice the relevant provisions. The ''Committee'' is defined u/s 2(b) and as per definition it means the governing body of a Cooperative Society, by whatever name called, to which the management of the affairs of society is entrusted. Word ''prescribed'' is also defined u/s 2(i) to say as prescribed by Rules under the Punjab Cooperative Societies Rules, 1963. Section 26 of the Punjab State Co.Op. Societies Act, insofar as the same is relevant, reads thus :--

"26(1) : The members of the Committee of a Cooperative Society shall be elected in the manner prescribed and no person shall be so elected unless he is a share-holder of the society.

(1-B) The term of office of a committee shall be three years;

Provided that a milk producers cooperative society or a society dealing in notified commodity may provide in its bye-laws that as nearly as possible one-third members of its committee shall retire every year in the manner laid down in its bye-laws and in the event of such a provision being made the vacancies caused as a result of retirement shall be filled in the prescribed manner."

As per provisions contained in Section 23 election of the Committee is to be held in accordance with the rule given in Appendix ''C''. Rule 2 of Appendix ''C'' provides for qualifications of the candidates whereas Rule 4 provides for election programme. Rule 5 provides for the filing of nomination papers and Rule 6 provides for the scrutiny of nomination papers, and disposal of objections, if any, regarding eligibility of the candidates. Rule 9 deals with the appointment and duties of the Presiding Officer.

26. Rule 25 of the Punjab Cooperative Societies Act provides dis-qualification for membership of the Committee. The Returning Officer, as per Rule 6 of Appendix ''C'' is to see whether a person is disqualified or not. Rule 26(B)(2) provides that no person shall be eligible to be elected for the committee of any society after he has served on that committee for a continuous period of not less than six years unless a period of not less than three years has expired since he last so served. This eligibility shall be checked by the Returning Officer at the time of scrutiny of nomination papers.

27. Bye-law 21.1. as it presently stands after the amendment, is challenged and, thus, is styled to be ultra vires of the Punjab Cooperative Societies Act by

contneding that it has totally done away with the element of election and elected Chairman of each affiliated union shall now automatically become members of the Board of Directors of the Milkfcd, thus, totally eliminating the election. There appears to be considerable merit in the contention raised by learned counsel for the petitioners, as noticed above. The only defence projected in he written statement and vehemently pressed into service at the time of arguments is that the amendment brought about is with a view to cut down the unnecessary delay in procedure for the elected Chairman of the Milk Unions to come on the Board of Milkfed and inasmuch as the strength of elected Board of Directors of the Milkfed was 11 the Chairman of each milk Union had to become member of the Board of Directors, it was an empty formality. This defence in face of relevant provisions of the Act and Rules, as have been quoted above, appears to be baseless. As has been mentioned above, admittedly, Milkfed is an apex Society having District Milk Unions as its members. Under Rule 25, disqualification of member is to be seen. For instance, a District Milk Union is in default to the Milkfed, the representative of that milk union can not contest election whereas bye-law 21.1, as it stands now, would clothe the Chairman of Milk Union to be Director of the Board of Milkfed automatically. This contention of learned counsel for petitioners is sought to be rebutted by pleading and so arguing that if a person suffers form any disqualification u/s 25, then he can never be elected to become member of the Board of Directors of Milkfed as the moment he suffers disqualification, he ceases to be member or Chairman or Vice Chairman of the Milk Union, has no legs to stand as it is not the person concerned, who has to incur disqualification but the Union that he represents. Further, if at a given time the Milk Union has incurred some disq ualification and cannot be member of the Milkfed, its representative cannot come in the Board of Directors, thus, creating a void. A Single Bench of this Court in Thakur Janak Singh v. State of Punjab 1974 PLJ 119, held that "The delegate or representative has no independent existence and he only re-prsents the Society which is the real member of the Committee and if the Society suffers from a disqualification, its representative cannot be eligible for election. It is not correct to say that what has to be judged or taken into consideration is the personal qualifications disqualifications of the representative and not of the Society which he represents." It was further held that "the word "person" in Rule 25 of the Punjab Cooperative Societies Rules, would include a registered coopertive soceity. The Use of the word "he", "his" and "him" would not imply that a natural human being is alone under contemplation and these words cannot apply to a society who would be a person within the contemplation of the statute". In Ajaib Singh v. Shri Kishan Saroop 1980 PLJ 275, Division Bench of this Court held that, "The nomination paper of an individual who represents a particular Society cannot be rejected on the ground that the said individual was not an active member. The relevant point would be whether the soceity, who is the voter, is an active member or not. The individual only represents the society". Again, single Bench of this Court in Kuldeep Singh v. State of Haryana 1981 PLJ 398, while relying upon Ajaib Singh''s case (supra), held that "An individual may suffer peronal disqualification on one count or he may suffer personal disqualification on ten counts, his personal disqualification cannot be taken into consideration as it is only the disqualification of the Society that he represents which can be taken into account". A Full Bench (Division Bench) (DB) of this Court in Ranjit Singh v. Registrar, Co.Op. Societies, Haryana. (1988) 3 LRS 109, held that, "The provisions of Rules 25 and 20 have to be interpreted in this background. Under the Haryana Act, only primary Societies can be members of the Central and Apex Societies. Bye-laws of the respondent-Bank also show that ten members of the Managing Committee (Board of Directors) have to be elected out of the representatives of the Primary Cooperative Societies. There may be a Central or Apex Society which does not have even a single individual member. Rules 25 and 26 apply to those Societies as well. They also apply to Primary Societies which have only individual as members. So, out of the various disqualifications enumerated in rules 25 and 26, some apply to individuals who are members of the Managing Committee of the Societies as representative of the individuals and there are some which apply to the members of the Committee who represent individual members as also Primary Societies. If the narrow construcion is put on the langauge of Rules 25 and 26, then no representative of the Primary Societies can be disqualified from seeking election or be deemed to have ceased to hold office even if the Primary Societies to whom they represent may have incurred all the disqualifications provided by the Act, Surely, this could not be the intention. The obejcts of the Act can be achieved only if the expression ''member of the Committee'' in Rule 26 be read to mean the Primary Society and not its representative". While so holding, reliance was placed upon Thakur Janak Singh''s case 1974 PLJ 119 (supra).

28. From Section 26, Rules 23 and 25, as have been noticed above, it is thus, apparent that element of election is inherently embed-ed and this precise element has been taken away by amending bye-law 21.1. It is settled proposition of law that statutory provisions have precedence over the Rules and Bye-laws and in case they conflict with the main provisions of the Statute, the same cannot be sustained. In Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others, , it was held that, "Section 73B provides a legislative mandate. Rule 61 has a status of subsidiary legislation or delegated legislation. Bye-law of a cooperative Society can at best have the status of an Article of Association of a company governed by the Companies Act, 1956 and the bye-law of a co-operative society framed in pursuance of the provisions of the relevant Act cannot be held to be law or to have the force of law. They are neither statutory in character nor they have statutory flavour so as to be raised to the status of law. Now if there is any conflict between a statute and the subsordinate legislation, the statute prevails over subordinate legislation and the bye-law if not in conformity with the statute in order to give effect to the statutory provisions, the Rule or bye-law has to be ignored. The statutory provision has precedence and must be complied with."

| 29. Bye-law 21.1 as amened now, is, thus, held to be contrary 10 the provisions contained in Section 26 of the Cooperative Societies Act and Rules 23

and 25 of the Rules. Resultantly, it is held that there has to be an election and automatic appointment of a member to the post of Director of Milkfed is illegal.

30. The contention of learned counsel appearing for the respondents that a similar writ petition bearing C. W.P. No. 6586 of 1993 was dismissed by this Court on June 2, 1993 and, therefore, this petition deserves to have the same fate, has not impressed me at all. The order passed in the writ petition, referred to above, would clearly show that it is the proviso to sub-section I(B) of Section 26 of the Punjab Cooperative Societies Act, 1963 which was styled to be unconstitutional and ultra vires to the provisions of Arts. 14 19(1)(g) and 31A(1) of the Constitution of India. The only contention that was noticed in the aforesaid writ was with regard to term of office of the Committee of Society which was earlier three years but was increaed to five. No merit was found in the contention aforestated by observing that the amendment Act was within the legislative competence of the State Legislature and the same was not hit by the vice of arbitrariness. Dismissal of Civil Writ Petition No. 8902 of 1993 can also not be successfully pressed into service as the said petition, as is clear from the orders passed, was dismissed by observing that petitioner had no fundamental right to continue in the office after his term had expired. Insofar as contention of learned counsel appearing for respondent No. 3 with regard to maintainability of the writ, the Milkfed being not instrumentality of the State, is concerned, sufficie it to say that no arguments have been raised on the said issue. The contention of learned counsel for respondents that prior to amendment of bye-law 21.1 the Milkfed was undergoing the process of holding election every year or when the Chairman of a milk union was changed and, therefore, no question can be raised to the validity of the amended bye-law 21.1 has no merit. The automatic election, as observed earlier, is against the mandate contained in various provisions of the Act and Rules as noticed above. Further, it is not the person, who as a matter of right, was to become member of the Board of Directors of the Milkfed. As noticed above, it is the union, that he was representing, that was to clothe him with the right to become members of the Board of Directors by way of election. A milk union could be defaulter or could have many disqualifications and Chairman of such milk union cannot possibly be taken as Director of the Milkfed simply because he happens to be Chairman of the said Milk union.

31. For the reasons recorded above these petitions succeed to the extent that bye-law 21.1 as approved by the Registrar, Coope-rative Societies on January 18, 1993 containing therein that elected Chairman of each affiliated Milk Union shall automatically be-come member of the Board of Directors of the Milkfed, is quashed. This setting aside of bye-law 21,1 would automatically review the unamended bye-law which necessarily required 11 members to be elected out of the Chairman of the affiliaied Milk Unions in accordance with the provisions of Punjab Cooperative Societies Act and Rules framed thereunder. It shall now be for the Registrar, Cooperative Societies, Punjab to see as to who out of the Petitioners continues to be member of the Milkfed out of the members elected from milk Unions and who out of the respondents, who might have come in by

way of process contained in the amended bye-law 21.1, to be removed. Copy of this judgment be sent to the Registrar, Co.Op. Societies, Punjab, for taking necessary action in the matter and pass consequential orders within a fortnight from today. There shall, however be no order as to costs.

32. Order accordingly.

