

**(1985) 05 P&H CK 0095**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 1648 of 1985**

Sher Chand

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

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**Date of Decision :** 17-05-1985

**Acts Referred:**

**Citation :** AIR 1985 P&H 337 : (1985) 82 PLR 516

**Hon'ble Judges :** I.S. Tiwana, J

**Bench :** Single Bench

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## Judgement

1. The short but interesting point of law raised in this petition relates to the interpretation of S. 26A of the Punjab Co-operative Societies Act, 1961 (for short, the Act). The part of the section relevant to the controversy raised reads as follows:-

"26-A Co-option of members.--

(1) Notwithstanding anything in S. 26, the Registrar may, by an order in writing, direct the committee of any co-operative society for 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 directions.

(2) Where a direction is issued under sub-section (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 condition".

What precisely is impugned herein is the co-option of respondents Nos. 5 and 6 as Directors or members of the Governing Body or the Committee of the Ferozepur Central Co-operative Bank Ltd. (hereinafter referred to as the Bank) and election of office bearers of the Bank on the basis of these co-options. The proceedings concerning the co-option and the election referred to above are

contained in the impugned Resolution No. 15 dated March 18, 1985 of the Directors of the Bank (Annexure P.1). Though the co-option and election referred to above have been assailed in the petition on grounds more than one, yet Mr. Kuldip Singh, learned Senior Advocate for the petitioner has confined the challenge to the following solitary ground as contained in para 10 of the petition:-

"10. That, as mentioned in para above, the general body of the Ferozepur Central Co-operative Bank only consists of primary Societies. There are only Societies which are members of the general body of the Bank. There are no individual members at all. Under the circumstances the applicability of the provisions of S. 26-A of the Act, (Rule) 23-A of the Rules and of the executive instructions, annexure P-2, regarding co-option to the Bank which is a Central Society does not arise. No Society can be Scheduled Castes or Backward Classes etc. The above mentioned provision can only be made applicable to the primary Societies where there are individuals as members. In this view of the matter, there can be no co-option at all the Ferozepur Central Co-operative Bank from amongst Scheduled Castes / Scheduled Tribes etc. under the above mentioned provisions of law. The action of the respondents in co-opting individuals as a member of the Board of Directors is thus wholly illegal and cannot be sustained in the eyes of law".

Rule 23A only regulates the mode or manner in which the co-option referred to above has to be made. It says that after the receipt of the direction from the Registrar in terms of the above noted section, the Committee of the Co-operative Society concerned shall immediately call a meeting of its members in accordance with the Rules and bye-laws and shall then co-opt to its Committee the number of members specified in the direction. This attack is sought to be met by the Bank as well as the private respondents with the following plea as contained in para 10 of the written statement of the Bank:--

"10. Contents of para 10 are admitted to the extent that the Central Body of the Ferozepur Central Co-operative Bank consists of primary societies and nine members have to be elected from nine zones (one from each zone). The rest of the contents are denied because the two members who have been co-opted were never enrolled as individual members to the society but they have been co-opted as the representatives of the member societies in the operational area of Bank and these societies represent the cause of the Scheduled Castes, Backward Classes and other weaker sections. They have been legally co-opted. The membership of the Talwandi Bhai Boot and Labour Workshop Co-operative Society, of which Ram Sarup is a member, is confined only to the members of the Scheduled Castes. The membership of Mahasinghwala Co-operative L/C. Manasingwala Society, of which Banta Ram, respondent No. 5, is confined to the members of the Scheduled Castes, Backward Classes and weaker sections of the society".

Besides this it is also contended that the petitioner should be relegated to his remedies under S. 55 of the Act, i.e., by assailing the co-option and election of

the private respondents through arbitration.

2. The parties are not at variance in accepting that the co-option of respondents Nos. 5 and 6 has taken place as per the written direction of the Registrar D/- March 8, 1984, copy of which is Annexure P-2 to the petition. The substance of this direction meant for all the Co-operative Societies in the State is that atleast two persons be co-opted in accordance with the provisions of S. 26A of the Act from amongst the categories of persons specified in sub-s.(2) of this section. Having heard the learned counsel for the parties I find that the petitioner must succeed.

3. In the light of sub-section (1) of S.26A it cannot possibly be disputed that the Registrar is competent to direct the Committee of a 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 his direction. It is again beyond dispute in the light of the opening words of sub-s.(2) of this section that such co-options have to be made from amongst members of the Co-operative Society to the Committee of which the co-option has to be made. The use of the word "the" before Co-operative Society clearly denotes a particular Society. The only other requirement being that such member or members to be co-opted must belong to the category of persons specified in this sub-sec., i.e., 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 other prescribed conditions. The question then is, are respondents Nos. 5 and 6 who have been co-opted to the Committee of the Bank, members of the Bank? Concededly they are not. It is the accepted position in the light of the provisions of sub-s (1) of S.15A that no Central Society like the Bank can have or has any individual members. This sub-section injuncts the Central Society from having an individual as its member. It reads thus:--

"No individual shall be admitted as member of a central or apex society unless such a society has been exempted by the Registrar in this behalf, by a general or special order ".

Concededly there is no order--general or special--by virtue of which an individual or respondents Nos. 5 and 6 can claim to be the members of the Bank. It is the undisputed position that only various Primary Societies in the area of operation of the Bank are its members. The case of the Bank and the private respondents, however, is that respondents 5 and 6 being representatives of their respective Primary Societies the membership of which Societies has only been confined to the members of the Scheduled Castes, Backward Classes or other weaker sections of society, have to be treated as members of the Bank for purposes of their co-option to its Managing Committee or the Board of Directors. This argument, on the face of it, is fallacious. Representative of a member Primary Co-operative Society undoubtedly represents the Society which alone is the member of the Bank as an agent or a delegate. Merely because the representative or the

delegate of a Society happens to be a Scheduled Caste, does not and cannot mean that the Society itself is to be treated as a Scheduled Caste or a member of the Backward Classes. The Society in law has an individuality or identity which is different from its individual members. The learned counsel for the respondents are not in a position to refer to any provision, principle, precedent or a legal fiction by virtue of which the Society which the Society which, as already pointed out, is a legal entity, has to be treated as belonging to the Scheduled Castes or Backward Classes. This is in spite of the fact that all the individual members of a given Society may be members of such Classes. It cannot be that then a Primary Society is represented by a Scheduled Caste, it becomes a Scheduled Caste Society even if there is no other Scheduled caste member of that Society and it has to be treated as non-Scheduled Caste Society when its representative happens to be a non-Scheduled Caste or non-Backward Classes person. It is thus patent that this S. 26A envisages co-option to the Committee of a Society which has individuals as its members or, in other words, the Primary Societies. There being no individual members of Central or apex Societies, none of their members (they essentially being Primary and Central Societies respectively) can be co-opted as members belonging to the Scheduled Caste or Backward Classes. The Primary Societies do not derive their colour or caste from their representatives. The representatives of such Societies cannot make the Societies themselves as Scheduled Caste or members of the Backward Classes on account of their own being members of such Classes. It is, therefore, plain that the direction contained in Annexure P. 2 is only referable to co-option to the Committees of Primary Societies and in case it means anything more than that, the same is without jurisdiction in the light of the plain phraseology of S.26A. The submission of Mr. Mann, learned Deputy Advocate General that since as per sub-s.(1) of this section the Registrar is competent to issue direction for such co-options to any co-operative Society or any class of Co-operative Societies, it should be taken to mean or include that he is competent to issue direction to Central or apex Societies also, does not appear to be sound in the light of the clear language of sub-s.(2) of this section. The members who can be co-opted to the Committees of the Societies referred to in sub-s.(1) have been specified in sub-s.(2). Since only individuals can belong to Scheduled Castes or Scheduled Tribes or Backward Classes, the Societies referred to in sub-s.(1) would essentially mean the Societies of which such individuals are the members. As there are no individual members of Central and apex Societies, it cannot possibly be held that any of the primary or the Central Societies which are their members, belongs to the Scheduled Castes or Backward Classes. Further it is not unknown that there are a number of types or classes of Primary co-operative Societies themselves. The words "class of Societies" as used in sub-s.(1) only refer to those Societies and not to Central or apex Societies.

4. Besides all this I have my doubts about the validity of this direction (P.2) if the matter is examined from another angle. Can there be a general or omnibus direction to all the Societies to co-opt two of their members to their respective

Committees as has been done by the Registrar? Was it ever intended by the Legislature or was it that he had to apply his mind to the case of each and every Society or class of Societies and take a conscientious decision with regard to the co-option of members to the Committees of those Societies in the light of the attending facts and circumstances? For example, can the Primary Co-operative Societies of the type to which respondents Nos. 5 and 6 belong, i.e., whose membership is confined to Scheduled Castes and Backward Classes people only, also be required to expected to co-opt Scheduled Castes and Backward Classes people to their Committees? The instruction in question surely governs even such Societies. But since no arguments have been addressed by the learned Counsel for the parties on this aspect of the matter, I refrain from expressing myself on that.

5. So far as the contention that the petitioner should be relegated to his remedy of arbitration under S. 55 of the Act is concerned. I see no substance in that for the simple reason that the every instruction issued by the Registrar who alone is competent to refer the matter for arbitration, is under challenge. No arbitrator appointed by him or he himself could examined the validity of these instructions.

6. Yet another aspect of the matter which finds a mention in the pleadings of the parties and cannot be ignored is as follows.

7. The Committee of the Bank is constituted of nine elected members, i.e., one from each of the nine zones into which the electorate and the area of operation of the Bank has been divided. There was a dispute with regard to the election from Zone No. 8 and it was the subject matter of Civil Writ Petn. No. 620 of 1984, *The Harijan Tanner and Shoe Makers Co-operative Industrial Society Limited v. State of Punjab* decided on Sept. 18, 1984: (reported in 1985 P&H LJ 219. In that petition I had directed vide my order of the same date that fresh election be held from that Zone, i.e., No. 8, after framing the voters' list afresh in accordance with law. Admittedly no election from this zone was held prior to the impugned co-option and election in spite of the clear direction in that petition. The explanation offered by the Bank is that the matter "regarding holding of election in Zone No. 8 were put up by the respondent No. 2 to the Board of Directors in the meeting held on 19-11-1984 vide item No. 30. The Board of Directors noted the contents of the decisions. A date for election of a Director from Zone No. 8 could not, however, be fixed due to disturbed conditions in the district. This item will again be put up before the Managing Committee shortly in one of its next meetings." The learned counsel for the Bank accepts that till today no such election has been held. The explanation offered by the Bank for not holding the election in terms of the direction issued by me on Sept. 18, 1984 appears to be simply ridiculous. Firstly, it is being proclaimed by the State Government time and again that law and order situation in the State, including the zone concerned, is under control and secondly, I see no reason as to why the present election and co-option could be held and not from Zone No. 8. The whole effort appears to be to avoid the 9th elected member of the Board

of the Bank.

8. In the light of the discussion above, while allowing this petition and setting aside the co-option of respondents Nos. 5 and 6 and also the election of office bearers based on those co-options, I direct the Bank to hold the election from Zone No. 8 within a period of eight weeks from today in accordance with the direction contained in my order dated Sept. 18, 1984, in C. W. P. No. 620 of 1984: (reported in 1985 P&H LJ 219 (supra) and it would only be thereafter that the election of the office bearers of the Bank would be held. The petitioner is also allowed Rs. 1000/- by way of costs from the Bank, i.e. respondent No. 2.

9. Petition allowed.