
(1992) 11 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 13461 of 1992

Surender Singh

APPELLANT

Vs

Registrar, Co-op.Societies, Haryana

RESPONDENT

Date of Decision : 25-11-1992

Acts Referred:

Citation : (1993) 2 LJR 97 : (1993) PLJ 294 : (1993) 3 RRR 30 : (1993) 3 SCT 795

Hon'ble Judges : J.S.Sekhon, J

Advocate : S.S. Gouripuria, AAG., S.S. Dalal, Advocate., Advocates for appearing Parties

Judgement

J.S. Sekhon, J.—The sole controversy involved in this writ petition is whether the tenure of three years of the members of the Committee of a Cooperative Society under Section 28(4) of the Haryana Cooperative Societies Act shall be reckoned from the date of election of the members of the Committee or from the date the members of such Committee assume charge of office.

2. The brief resume of facts relevant for the disposal of this controversy is that the election of the Managing Committee of the Board of Directors of Sirsa Central Cooperative Bank Limited Sirsa, was scheduled to be held on 4th October, 1989, as per the original election programme, but due to some reasons, it was held on 21.9.1989, when out of ten members, only six members of the Board were elected unopposed while the remaining three and one were elected on 10.1.1990 and 30.1.1990 on the basis of elections held on the said dates in respect of Zone Nos. 5, 7, 8 and 2 respectively as per the return filed by respondent No. 1 the Registrar, Cooperative Societies Haryana Chandigarh. It is also admitted case of respondent No. 1 and the petitioners that the first meeting of the Board of Directors was called by the Managing of the Bank for 26.7.1990 for cooption purposes. The petitioners thus contend that they assume office on 26.7.1990 and the tenure of the three years of Manager Committee should be reckoned from this date. Reliance in this regard has been placed on the decision of Division

Bench of this Court in *The State of Punjab and another v. The Managing Mortgage Bank Ltd., Patti*, 1980 PLJ 44. On this assumption, the petitioners contend that the term of the Managing Committee of the Bank would last upto three years from 26.7.1990, but respondent No. 1 had wrongly issued notification, Annexure P1, under Section 33(1) of the Haryana Cooperative Societies Act, 1984, appointing Administrator on the wrong assumption that the term of Committee/Bank having come to an end, the Committee does not exist. Through this writ petition, the petitioners seek the quashment of this notification, Annexure P1.

3. Sh. Naresh Gulati, Registrar, Cooperative Societies, Haryana, Chandigarh respondent No. 1, has filed the return, contending that as per provision of Section 28(4) of the Haryana Cooperative Societies Act, the term of three years of the Committee shall start from the date of election and as six of the Directors had been elected unopposed on 21.9.1989, the term of the Boards stood completed on 20.9.1992. Thus, he maintains the above referred notification. Annexure P1 dated 24.9.1992 was perfectly legal.

4. A separate return has been filed on behalf of the Sirsa Central Cooperative Bank Ltd. by Shri Surjit Singh, Managing Director respondent No. 2, contending that the judgment of the Division Bench of this Court reported as *Patti Primary Cooperative Land Mortgage Bank's case* (supra) is not applicable to the facts and circumstances of the case in hands as therein the provisions of Section 26(1B) of the Punjab Cooperative Societies Act, 1961, were interpreted, whereas the provisions of Section 28(4) of the Haryana Cooperative Societies Act are specific in this regard. Thus it is maintained that the term of three years of Management Committee of the Society has to be reckoned from the date of its election and not from the date of the Committee assumes office. Reliance has also been placed on the observations of Division Bench of this Court in *Kartar Singh and others v. State of Punjab and others*, 1989(1) PLJ 58 : 1989(1) RRR 328 (P&H) (DB). In support of the alternative proposition that the Management Committee shall be presumed to have assumed charge on the date of its election as there was no impediment to do so.

5. I have heard the learned counsel for the parties besides perusing the record. The provisions of Section 26(1B) of the Punjab Cooperative Societies Act, 1961, providing for term of office of a Committee, simply provided the "term of office of a Committee shall be three years". There is no indication in these provisions as to whether the period of three years has to start from the date of election of such Committee or from the day it assumes office. However, since the term of office of Committee has been provided to three years, the only logical conclusion under the above referred provisions of Punjab Cooperative Societies Act would be that the period of three years shall start from the day such Management Committee assumes office. While interpreting the provisions of Section 26(1B), *ibid*, the Division Bench of this Court in *Patti Primary Cooperative Land Mortgage Bank's case* (supra), held that the tenure of three years of the Committee would

start from the date of assuming charge by the Committee and not from the date of its election. Subsequently, in Kartar Singh's case (supra), the Division Bench of this Court while interpreting the provisions of Section 26(1B) of the Punjab Act has held that in the said case, the election of the Managing Committee took place on March 15, 1985 and there being no impediment for the Committee to assume charge, it shall be presumed that the Committee has assumed charge on the date of its election. The findings of the Division Bench in Patti Primary Cooperative Land Mortgage Bank's case that the tenure of the Committee shall start from the day it assumes office were distinguished and clarified on facts by stating that these observations pertain to the peculiar facts of that case, because therein just after election of the Managing Committee, the High Court had stayed the Members of the Committee from entering into office till the decision of the writ petition.

6. Anyhow, the observations of the above referred two Division Benches of this Court are not of much help in the case in hand as herein Section 28(4) of the Haryana Cooperative Societies Act had removed the controversy by making tenure of three years of the Managing Committee of the Cooperative Society from the date of its election. The provisions of Section 28 reads as under :

"28. Election and tenure of committees. (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 member of the society.

(2) The election process once started shall not be postponed and disputes, if any, pertaining to the election, shall be entertained after the completion of the election process in accordance with the provisions of this Act.

Explanation. The election process shall be deemed to have started from the date of order of the Registrar fixing the date of election.

(3) The committee of each society shall, before the expiry of the term of its committee arrange for the election of a committee in accordance with its byelaws failing with the Registrar shall arrange to hold such election.

(4) The committee shall, unless removed earlier by the Registrar hold office for a period of (three) years from the date of election :

Provided that the tenure of the committee of primary, central and apex milk producer, cooperative societies shall be as specified in the byelaws of such societies :

Provided further that if the tenure of a committee already constituted :

(a) has not exceeded three years, it shall cease to function on to completion of three years tenure; and

(b) has exceeded three years, if (sic) it shall ease (sic) cease the function on the commencement of the Haryana Cooperative Societies (Amendment) Act, 1987.

(5) Notwithstanding anything contained in byelaws of a Cooperative Sugar Mills, the members who are employees in the mills, shall constitute one separate zone for the purpose of election to the members of the committee thereof. In case no such member has been elected, the members of the committee shall coopt one such member. If no such member is elected or coopted as a member of the committee, the Registrar may nominate one such member as a member of the committee.

(6) No individual shall, at any time, be a member of a committee of more than two primary societies, one central society and one apex society :

Provided that nothing in this subsection shall apply to a member nominated under subsection (1) of Section 29 or to a member of the committee of an apex central society nominated to serve on the committee of another apex or central society, as the case may be, in accordance with the provisions of their byelaws."

A bare glance through the above referred provisions leaves no doubt that according to subsection (2) the election process once started shall not be postponed and disputes, if any, pertaining to the election shall be entertained after the completion of the election process. The explanation appended to subsection (2) further makes it clear that the election process shall be deemed to have started from the date of the order of the Registrar fixing the date for the election. Subsection (4) further provides that the tenure of such committee shall be three years from the date of election. Obviously, the term "date of election" pertains to the date on which the election process has been completed and not to the date from which the election process shall be deemed to have started.

7. Mr. S.S. Dalal, the learned counsel for the petitioners contends that the provisions of subsection (4) of Section 28 of the Haryana Cooperative Societies Act provide a tenure of three years for the committee to hold office from the date of its election and thus the holding of office for a period of three years would necessarily imply that this tenure should start from the date of assumption of office. I fail to agree with him as the words "the committee shall hold office for a period of three years from the date of its election" simply connotes that the committee shall remain in office for a period of three years from the date of its election and does not even obliquely indicate that the tenure of three years would start from the date of assuming its office or charge. Thus, there is no escape but to conclude that the term of Managing Committee of a Cooperative Society under Section 28(4) of the Haryana Act shall start from the date of completion of its election process and not from the date of the Committee assumes office.

8. In the case in hand, it is the admitted case of the parties that the election of the Managing Committee, Sirsa Cooperative Bank was scheduled for 4th of October, 1989, as per election programme but actually according to respondent No. 1, the election was held on 21.9.1989 when six out of ten members of the Board of Directors of the Sirsa Cooperative Bank were elected unopposed while

out of the remaining three were elected on 10.1.1990 and the fourth was elected on 30.1.1990. If that is so, then the election process of the election of Managing Committee of the Bank was completed on 30.1.1990. Thus the tenure of three years of this Committee would last upto 29.1.1993.

9. The mere factum that the Manager of the Bank had called first meeting of the Board of Directors for 26.7.1990 is thus of no relevance because the provisions of section 28(4) are specific that the tenure of the Committee for three years shall start from the date of election and not from the date when the elected members of the Committee assume office. If that is so, then the Registrar of Cooperative Societies was not competent to issue notification (Annexure P1) on 24.9.1992, appointing Administrator of the Central Cooperative Bank Ltd. on the ground of nonexistence of Managing Committee as the tenure of the elected members of the Managing Committee of this Bank had not come to an end by then.

10. Consequently for the reasons recorded above, the notification Annexure P1, being not legally sustainable is hereby quashed by accepting this writ petition and the respondents are directed to allow the elected members of the Committee to run the affairs of the Bank in accordance with the provision of the Act. The petitioners shall also be entitled to costs of this writ petition which are quantified at Rs. 5,000/.