
(2002) 12 P&H CK 0029
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7828 of 2002

Tehal Singh

APPELLANT

Vs

The Additional Secretary Cooperation

RESPONDENT

Date of Decision : 17-12-2002

Acts Referred:

Citation : (2003) 134 PLR 303 : (2003) 2 RCR(Civil) 49

Hon'ble Judges : S.S. Nijjar, J;M.M. Kumar, J

Bench : Division Bench

Advocate : Ashwani Prashar, for the Appellant; H.S. Sran, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—The petitioner was elected as a Member of the Managing Committee of the Kandila Cooperative Agricultural Society Limited (hereinafter referred to as "the Society"), on 25.8.1998, thereafter, he was also elected as President of the Society on 11.12.1998. The Society is registered under the Punjab Cooperative Societies Act, 1961 (hereinafter referred to as "the Act"). The term of the petitioner as President of the Society is co-terminus with the tenure of the Managing Committee of the Society, which is due to expire on 24.8.2003, By order dated 20.11.2000. Assistant Registrar, Cooperative Societies, Batala, exercising the powers of Registrar Cooperative Societies, Punjab, Chandigarh ceased the petitioner from the Presidentship of the Society under Bye-law 33(a) of the Society. Aggrieved against the aforesaid order, the petitioner filed a revision petition u/s 69 of the Act before respondent No. 1, Additional Secretary Cooperative, Punjab. Respondent No. 1 has dismissed the Revision Petition by order dated 6.12.2001. By way of this Writ Petition under Articles 226/227 of the Constitution of India, the petitioner challenges the aforesaid two orders on numerous grounds.

2. Written statement has been filed by respondents No. 1 and 2. It is stated that the Society of which the petitioner was the President, was ordered to be wound

up by the order of the Assistant Registrar, Cooperative Societies, Batala dated 22.02.2002. Therefore, since 28.10.2002, the Managing Committee of the Society ceased to function. The petitioner, therefore, also ceased to function as the President. The writ petition, therefore, deserves to be dismissed as the petitioner has not come to this Court with clean hands. In any event, since all the elected representatives of the Managing Committee have ceased to function, the Writ Petition has become infructuous. It has also been pointed out that the petitioner was disqualified to be either a member or the President of the Society as at the time of election, the petitioner was a paid employee of the Shiro-mani Gurdwara Parbandhak Committee (hereinafter referred to as "the SGPC") which is a corporate body constituted under the Sikh Gurdwara Act, 1925 (hereinafter referred to as "the Gurdwara Act") Bye-law 35 of the Society prescribes a condition that a person who is an employee of a corporate body shall be disqualified to contest election to the Managing Committee of the Society.

3. We have heard the learned counsel for the parties at length and have perused the paper-book.

4. Mr. Prashar, learned counsel for the petitioner has submitted that Bye-law 33 of the Society has been wrongly mentioned in the impugned order passed by the Assistant Registrar. The petitioner has been sought to be ceased from membership of the Committee under Rule 26 of the Punjab Cooperative Societies Act, 1963 (hereinafter referred to as "the Rule s") read with Bye-law 35 (viii) of the Society. According to the learned counsel, the petitioner has not incurred any of the disqualifications contained either under the Rule s or under the Bye-laws. He further submitted that respondents are not disputing the fact that the petitioner has been an employee of the SGPC as a disqualification to be elected as the President, the remedy of an election petition was available u/s 55 of the Act. But his membership could not be ceased under Rule 26(f) or under Bye-law 35(viii) of the Society. Clause (f) of Rule 26 of the Society provides that a member of a Committee shall cease to hold his office if he becomes subject to any disqualification which would have prevented him from seeking election, had he incurred that disqualification before election. Similarly, Bye-law 35(viii) of the Society provides that a member of the Committee shall cease to hold Office if he becomes a paid employee of the Society or of the financing Bank. According to the learned counsel, the matter is squarely covered by a Division Bench judgment of this Court in the case of Kuldeep Singh Mangewal v. The State of Punjab and Ors. 2000(2) P.L.J. 118.

5. We find much substance in the submissions made by the learned counsel for the petitioner. It has been held by this Court in the case of Kuldeep Singh Mangewal (supra) that the disqualification referred to in Rule 26(f) would be a post-election disqualification.

The Division Bench held as under:-

"5.Rule 26 of the Rule s, on the other hand, provides for the post- election

disqualifications and if a person incurs any of those disqualifications after he has been elected a member of the Committee he shall cease to hold his office as such. Rule 26 of the Rules reads as under:

"26. Cessation of membership of committee.- A member of the Committee shall cease to hold his office as such if he:

(a) continues to be in default in respect of any sum due from him to the Cooperative Society for such period as may be laid down in the bye-laws;

(b) ceases to be a member;

(c) is declared insolvent;

(d) becomes of unsound mind;

(e) is convicted of an offence involving dishonesty or moral turpitude; or

(f) becomes subject to any disqualification which would have prevented him from seeking election, had he incurred that disqualification before election."

A reading of all the clauses of the aforesaid rule makes it clear that the disqualifications referred to therein must be incurred by a person after he has been elected a member of a committee and it is on the incurring of any of those disqualifications that he will cease to hold his office as such. It is not in dispute that the petitioner was a defaulter of the Nizampur Society since 31.1.1992 and he paid back the debt on June 6, 1997. When he contested the election as President of the Society on 26.7.1995 he was in default to that Society and, therefore, he was not eligible to contest. He, however; contested the election successfully and became the President. The argument of the learned counsel is that Rule 26 prescribes the post-election disqualifications i.e. disqualifications which a person should incur after he became a member of the Committee but since the petitioner had incurred the disqualification prior to his election, Rule 26 would not apply. There is merit in this contention. Clause (f) of Rule 26 under which action has been taken against the petitioner provides that a member of a committee shall cease to hold his office as such if he "becomes" subject to any disqualification which would have prevented him from seeking election had he incurred that disqualification before election. The word "becomes" in Clause (f) leaves no room for doubt that the disqualification has to be incurred after he was elected a member of the committee. If a person had incurred the disqualification even prior to his election as member of the committee then Clause (f) of Rule 26 of the Rules would not apply. Rule 25 and 26 deal with disqualifications of person to become members of a committee or to continue as members thereof and, therefore, in the very nature of things the provisions of these Rules have to be construed very strictly. In the case before us the petitioner was already a defaulter when he contested for the membership of the committee and, therefore, Clause (f) of Rule 26 of the Rules will not be attracted...."

The aforesaid observations are fully applicable to the facts and circumstances of

the present case.

6. We are also of the opinion that no action could have been taken against the petitioner under Bye-law 35(viii) of the Society. Bye-law 35 (viii) of the Society reads as under:-

"35. A member of the Committee shall cease to hold office; if he:

(viii) Becomes a paid employee of the Society or of the financing Bank."

A perusal of the aforesaid provisions clearly shows that a member of the Committee shall cease to hold Office, if he becomes a paid employee of the society or of the financing Bank. In our opinion, this Bye-law again pertains to a disqualification which may be incurred by a member after becoming a Member of the society. Therefore, the ratio of the judgment of this court would be fully applicable. Admittedly, the petitioner was an employee of the S.G.P.C. since 1980. Therefore, no action could have been taken under Bye-law 35 (viii). Even otherwise, we are of the opinion that Bye-law 35(viii) refers only to a member who becomes a paid employee of the society or of the financing Bank. Respondent No. 1 in the order dated 6.12.2001 has held that the petitioner has ceased to be a member since he was an employee of the SGPC which has been constituted as a body corporate u/s 94-A of the Sikh Gurdwara Act, 1925.

7. From the above, it becomes apparent that the impugned orders, annexures P-1 and P-4 are wholly without jurisdiction. In view of the above, it is not necessary to adjudicate upon the other submissions made by the learned counsel for the parties.

Consequently, the writ petition is allowed. Impugned orders, annexures P-1 and P-2 are hereby quashed. No costs.

Sd/- M.M. Kumar, J.