(2018) 12 P&H CK 0165

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 25915 Of 2018

Tejinder Singh Middukhera APPELLANT

Vs

State Of Punjab And Others RESPONDENT

Date of Decision : 20-12-2018

Acts Referred:

Punjab Cooperative Societies Act, 1961 — Section 26(2)(a)(a), 27, 68, 68(1)(e)
Punjab Cooperative Societies Rules, 1963 — 26, 26(a)

Citation : (2018) 12 P&H CK 0165

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : D.V.Sharma, Tushar Sharma, Kanica Sachdeva, A.P.S. Mann

Final Decision : Disposed off

Judgement

Augustine George Masih, J.

1. Petitioner has approached this Court impugning the order dated 07.09.2018 (Annexure P-9) bearing Endorsement dated 17.09.2018 passed by The Registrar, Cooperative Societies, Punjab-respondent No. 2, in pursuance to which the petitioner cease to be the Director of the Board of Directors of Punjab State Cooperative Agricultural Development Bank Ltd.

2. A preliminary objection has been taken by the learned counsel for respondent No. 4 that the writ petition would not be maintainable at this stage as there is a statutory appeal available under Section 68 (1) (e) of the Punjab Cooperative Societies Act, 1961 (hereinafter referred to as '1961 Act'), whereby an appeal is maintainable against an order made by the Registrar removing or suspending a Committee or a member thereof under Section 27 of the 1961 Act.

3. Learned senior counsel for the petitioner submits that the Registrar, Cooperative Societies had not exercised his powers under Section 27 of the 1961 Act but had exercised his powers under Rule 26 (a) of the Punjab Cooperative Societies Rules, 1963 read with Bye-Laws 33 (f) and there is no provision for an

appeal provided under the Rules or the Bye-Laws under such circumstances.

4. I have considered the submissions made by the learned senior counsel for the petitioner as well as the learned counsel for respondent No. 4 but find myself in agreement with the counsel for respondent No. 4 for the reason that the Governing provision is the Act and the Rules are only for the aid and applicability of the Act itself filling up the gaps by giving therein the details for the smooth execution of the Act.

5. The power, therefore, primarily has to be and flows from the Act itself. Section 27, which deals with the removal and suspension of a Committee or a member thereof, makes it amply clear that these are the substantive powers conferred on the Registrar to exercise his power of removal or suspension of a Committee or a member thereof. Similarly, appeal from the orders passed, as provided for in the Act, is given in Section 68 of the 1961 Act. As per Section 68 (1) (e), an appeal lies under this Section against an order made by the Registrar removing or suspending a Committee or a member thereof under Section 27 of the Act. Rule 26 and Bye-Law 33 (f) would be ancillary and subservant to the provisions of the Act giving the details with regard to the exercise of such powers in the given circumstances as mentioned therein, which cannot have an over-riding effect on the provisions of Act itself. Rules would, when there is conflict, would give way to the Act and when a substantive right has been provided for under the Act itself, the same would prevail.

6. In the present case, appeal is provided for against the powers exercised by the Registrar in a particular circumstance and in the considered view of this Court, the said powers have been exercised by the Registrar which emanate from Section 27 of the 1961 Act. If that be so, an appeal would be maintainable before the Government as per Section 68 of the said Act.

7. Learned senior counsel for the petitioner has asserted that in the light of the order dated 23.08.2017 (Annexure P-3), Mr. D.P.Reddy, IAS, Additional Chief Secretary-cum-Financial Commissioner Cooperation has been appointed as Chairman of the Punjab State Agricultural Development Bank under Section 26 (2) (a) (a) of the Punjab State Cooperative Societies Act, 1961, who would also be exercising the powers of the Government and, therefore, even if an appeal is preferred by the petitioner, the same would be illusory.

8. This contention of the learned senior counsel for the petitioner would not sustain in the light of the fact that as per the written instructions received by the counsel for respondent No. 4, the post of Chairman of the Punjab State Agricultural Development Bank is lying vacant. This, he contends, is based upon the fact that Sh. Reddy has since resigned from the All India Administrative Services and with his resignation having been accepted, he cease to be the Chairman of the Punjab State Agriculture Development Bank Ltd.

9. Learned counsel for the State informs the Court that as of now, Mr. Vishavjeet Khanna is the Additional Chief Secretary-cum Financial Commissioner

Cooperation, Punjab.

10. If that be so, there would be no impediment as far as preferring an appeal by the petitioner is concerned.

11. In view of the above, this Court relegates the petitioner to avail his alternative remedy of statutory appeal. In case the appeal is preferred by the petitioner within a period of two weeks from today, the same shall be entertained and no objection with regard to the delay in filing the appeal shall be taken.

12. Writ petition stands disposed of accordingly.