

(1998) 10 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 944 of 1985 in Civil Writ Petition No. 1648 of 1985

The State of Punjab and Others

APPELLANT

Vs

Sher Chand and Others

RESPONDENT

Date of Decision : 27-10-1998

Acts Referred:

Citation : (1999) 121 PLR 251 : (1999) 1 RCR(Civil) 264

Hon'ble Judges : N.C. Khichi, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : P.S. Chhinna, D.G, for the Appellant; P.S. Patwalia and G.S. Gill, for the Respondent

Judgement

Jawahar Lal Gupta, J.—Are the provisions of Section 26A of the Punjab Cooperative Societies Act, 1961, not applicable to an Apex or a Central Society? And did the Registrar act illegally in issuing the instructions dated March 8, 1984 when he directed that upto two persons belonging to the Scheduled Castes may be co-opted by the Managing Committees of the Cooperative Societies u/s 26A ? These are the two questions that arise for consideration in these two Letters Patent Appeals.

2. A few facts may be noticed.

3. Initially, instructions had been issued by the Registrar regarding co-option from amongst the persons belonging to the Scheduled Castes, Scheduled Tribes, Backward Classes and small land holders/tenants. Vide letter dated March 8, 1984 the instructions were modified to provide as under :-

"Upto two persons out of the aforesaid Managing Committees of Cooperative Societies. Complying with the provisions of Sections 26A of the Punjab Cooperative Societies Act, 1961 such co-option should take place before the election of office-bearers in the Societies."

4. In pursuance to the above directions, the Ferozepur Central Cooperative Bank Limited, co-opted S/Shri Banta Ram and Ram Sarup as members of the Board. This action was challenged through C.W.P. No. 1648 of 1985. It was inter alia urged that Section 26A was not applicable to an Apex or a Central Society. Thus, the co-option was vitiated. The challenge was sustained by the learned Single Judge Aggrieved by the judgments, the State of Punjab as also the two individuals have filed these two Letters Patent Appeals.

5. Learned counsel for the parties are now agreed that since the terms of the Board of Directors has already expired during the pendency of these appeals, the basic controversy does not subsist. However, they submit that the correctness of the view taken by the learned Single Judge deserves to be considered for future guidance.

6. We have heard learned counsel, for the parties.

7. According to Section 15-A, there are three kinds of societies viz. the primary central and apex societies. The primary society consists "exclusively of individuals". The central society includes "primary societies." The apex society includes "central societies." Section 26 of the Act provides for the election and nomination of the members of the committees. It lays down that the term of office of a committee shall be five years. Clause (IF) inter alia provides that "the first committee may be nominated by the Registrar for a period of six months extendable upto one year in the case of primary society and for a period of one year extendable upto three years in the case of a central society or an apex society." In cases where the Government has subscribed to the share capital of a cooperative society or has guaranteed the repayment of the principal etc., the Government or its nominee "have the right to nominate on the committee such number of persons, not exceeding three or one third of the total number of members thereof, whichever is less ... In Section 26A a provision for co-option of members has been made. This provision reads as under :-

"26A. Co-option of members; (1) Notwithstanding anything in Section 26, the Registrar may, by an order in writing, direct the committee of any 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 the direction.

(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 conditions. (3) Members co-opted under sub-section (2) for serving on the committee of a co-operative society shall have the same rights and privileges and shall be subject to the same liabilities as elected members of the committee of that society."

8. A perusal of the above provisions shows that the Registrar has been

empowered to issue instructions regarding a cooperative society or a class of cooperative societies to co-opt one or two members on the committee. The obvious purpose is to ensure representation on the governing body of a committee for members of the weaker sections of the society. This purpose is evident from a perusal of Clause 2 where in it has been provided that co-option can be made from amongst "members - belonging to Scheduled Castes, Scheduled Tribes or Backward Classes or from amongst members who as land owner or tenant or as both do not hold more than the prescribed area of agricultural land....." Clause 3 ensures parity of treatment for the elected and the co-opted members.

9. In case of a primary society, the provision poses virtually no problem. Since a cooperative society consists exclusively of individuals, the committee shall be competent to co-opt two individual members. However, in case of a central or an apex society, which consists of only primary societies or central societies, the co-option of a member can only mean the co-option of a society. In other words, the direction of the Registrar shall entitle the committee to co-opt two societies as members of the Board of Directors. Who will represent those societies? Section 26A contains no answer. However, the provisions exists in Section 19 which lays down the manner of exercising vote. This provision inter alia provides that "a cooperative society which is a member of another cooperative society, may, subject to the rules appoint one of its members to vote on its behalf in the affairs of that other society." Thus, when the committee of a central or an apex society co-opts another member/society, the concerned society shall have the right to appoint one of its members to act on its behalf of the committee.

10. From a perusal of the above, it is apparent that the provision of Section 26A applies not only to a primary but even to a Central and an Apex Society. Thus, the view taken by the learned Single Judge that the provision is not applicable to an Apex or a Central Society cannot be sustained.

11. The purpose of the provision being to ensure representation to weaker sections, we find no justification for the narrow construction placed on the provision by the learned Single Judge. It is a beneficial provision. It has to be liberally construed. In the context of the cooperative Societies Act, it is only calculated to provide due representation to the weaker sections. If co-option is permissible in case of a primary society, there appears to be no rationale for taking the view that it shall not be admissible in case of a Central or an Apex Society.

12. Despite the above, it has been contended that the instructions issued by the Registrar were invalid.

13. Even this contention cannot be accepted. The relevant portion of the circular has already been reproduced above. A perusal there of shows that the managing committees of the cooperative societies have been authorised to co-opt "upto two persons".

14. It has been submitted that individuals are members of only primary societies and thus, the circular should not be made applicable to the Apex or Central societies where the membership is normally not given to the individuals.

15. This contention cannot be accepted. The person as mentioned in the instructions signifies not only an individual but even a juristic person.. Thus construed, the managing committee of an Apex or a Central Society shall be entitled to co-opt upto two members from amongst the eligible societies. Thus, the instructions issued by the Registrar are not contrary to the provisions of the Act.

16. In view of the above, the two questions as posed at the outset are answered in favour of the State and against the petitioners. It is held that the provisions of Section 26A are applicable to even a Central and an Apex Society. It is further held that the circular issued by the Registrar is not illegal. So far as the nomination of respondent Nos. 5 and 6 is concerned, the appeals have been rendered infructuous.

17. As a result, both the appeals are disposed of in the above terms. No costs.