
(1969) 03 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 3589 of 1968

Umrao Singh

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 18-03-1969

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Payment of Bonus Act, 1965 — Section 37
Punjab Co-operative Societies Act, 1961 — Section 15, 23, 23(1), 24, 25
Punjab Co-operative Societies Rules, 1963 — Rule 22, 23, 3, 4

Citation : (1970) 2 ILR (P&H) 538

Hon'ble Judges : Shamsheer Bahadur, J; R.S. Narula, J

Bench : Division Bench

Advocate : Kuldip Singh and S.K. Aggarwal, for the Appellant; S.K. Jain, for A.G. for Respondents 1 to 4 and Karampal Singh Sandhu, for the Respondent

Final Decision : Allowed

Judgement

Shamsheer Bahadur, J.—The substantial and surviving question arising in this writ petition under Articles 226 and 227 of the Constitution of India by Umrao Singh concerns the constitutional challenge to election programme. Annexure "A", for the election of the Board of Directors of the Doaba Co-operative Sugar Mills Limited, Nawanshahr (hereinafter called the Society) whereby on the various dates in the month of November, 1968, shareholders' lists of the seven zonal electorates were formed and published to elect one Director each. This method of election, according to the Petitioner, is in violation of, and contrary to, the provisions of Section 24(b) specifically and Section 23 generally of the Punjab Cooperative Societies Act, 1961 (hereinafter called the Act) as also of Rule 22 of the Punjab Co-operative Societies Rules, 1963, and by-law 8 (iv) (e) of the By-laws of the Society, both provisions being statutory.

2. The notification of the State Government of 6th of July, 1963, authorising the election of the Directors in different zones instead of a general meeting as required by Section 24 and 26 of the Act, under its plenary powers of Section 77

of the Act, is challenged on the ground that the said empowering Section 77 suffers from the vice of excessive delegation and in consequence void and ultra vires. Two other points raised in the petition do not require any discussion, one of these having been conceded by the State Government and the other not being pressed by Mr. Kuldeep Singh, the learned Counsel for the Petitioner.

3. Under by-law 9 of the By-laws of the Society, the board of Directors shall consist of 15 Directors, seven being representatives of individuals, three representatives of co-operative institutions and five being the Government nominees. The petition rightly attacks the provision with regard to five nominated Directors as u/s 26(2) of the Act, the Government where it has subscribed to the share capital of a co-operative society, as in this case, will have a right to nominate on the committee "such number of persons not exceeding three or one-third of the total number of members thereof. Both in the written statement and in the concession made by Mr. S. K. Jain, the learned Counsel for the State, it is made clear that the Government has no intention to depart from the requirements of Sub-section (2) of Section 26 and consequently this point of attack exhausts its force altogether. The other matter, which is not pressed by Mr. Kuldeep Singh, is the method and manner of publication of the zonal electorates and the names of the individual shareholders included therein. We are, therefore, no longer concerned with this matter.

4. The Petitioner is a Director of the Doaba Co-operative Sugar Mills Ltd., which has been registered under the Act and its area of operation extends to the whole State of Punjab, while the membership consists of both individuals owning shares of the Society and other Co-operative institutions. The share capital of the Society is one crore, each share being of the value of Rs 100. The co-operative principle is preserved by the provision that no individual member would have a holding of shares valued for more than Rs. 25,000. The contentious clause in the by-laws of the Society is by-law 9 to which reference has already been made and Clause (xiii) of it provides thus:

The Board of Directors shall include representative of shareholders on zonal or geographical basis in the proportion of number of shares as far as practicable. These representatives shall be elected in such manner as the Registrar may direct.

Under the instructions issued by the Registrar for holding election of Directors of all the co-operative sugar mills in Punjab, it is provided that zonal lists of shareholders would be prepared and exhibited for a period of 10 days at the registered office of the mills and shareholders from these zones, which are seven in the case of the Society, shall elect one member each from the zone. In other words, special electorates on zonal basis have been created and only share-holders of a zone are entitled to elect a Director from that zone. Election of the board of Directors of the Society was to be held on 30th of November, 1968 according to the programme Annexure A, to which reference has already been made. It is not necessary to refer to the various dates in this programme apart from observing

that various stages and processes culminating in the election on 30th of November, 1968, were set out commencing from a period of one week from 24th to 31st October, 1968, relating to printing of zonal lists of shareholders. The seven zones admittedly were carved by the Registrar on the basis of geographical contiguity of the various areas but the holding of shares do not appear to have been taken into consideration by the Registrar while creating these zones. An objection was raised in the petition, on which nothing turns now, that the publication was made without inviting objections and no due consideration was given to the wishes of the share-holders.

5. The Motion Bench of S. B. Kapoor and Narula, JJ., while admitting the petition on 29th of November, 1968, did not grant the prayer of the Petitioner to stay the elections, but it was directed that the results thereof would be withheld by the presiding officer.

6. Before adverting to the arguments addressed by Mr. Kuldip Singh, on behalf of the Petitioner, it would be well to set out Section 77 of the Act under which the State Government has taken for itself the powers of creating zones in contravention to the provisions of the Act to which reference would be made hereafter:

77. The Government may, by general or special order, to be published in the Official Gazette, exempt any co-operative society or any class of co-operative societies from any of the provisions of this Act, or may direct that such provisions shall apply to such societies or class of societies with such modification as may be specified in the order.

7. The counsel has urged that the election of Directors on basis of zones is against the gist and essence of the principles of the cooperative societies which have been given statutory shape in the Act which incorporated the provisions of the previous Acts after substantial modifications.

8. In the preliminary Chapter of the Act relating to definitions, co-operative society", which may be registered under the Act, can have both limited and unlimited liability and the Registrar is the principal Government officer for administration of the societies. Chapter II relates to registration of co-operative societies and u/s 4, only such a society "which has as its object the promotion of the economic interests of its members in accordance with cooperative principles, or a society established with the object of facilitating the operations of such a society" can be registered. The minimum number of members of a society should be ten and apart from the Government, which can be a member, the holding of each share-holder has to be restricted, subject to a maximum of one-fifth of the capital. Chapter III relates to members of co-operative societies and their rights and liabilities, and u/s 15, individuals, co-operative societies and Government and such classes of persons notified by the Government as such, can be members of such a society. Every member of a co-operative society shall have one vote in the affairs of the society.

9. Chapter IV relates to management of co-operative societies and Sections 23, 25 and 26 form part of this Chapter. Under Sub-section (1) of Section 23, "the final authority in a co-operative society shall vest in the general body of members". A smaller body than the committee may, however, be created by the by-laws of the society according to the proviso. u/s 24, a general meeting of a co-operative society shall be held once in a year inter alia, for the purpose of "(b) election, if any, of the members of the committee other than nominated members". Mr. Kuldip Singh has emphasised that the Directors, who are to be the members of the committee have to be elected by a general body of co-operative society and not by zones which have been created by the State Government. Section 25 makes a provision for special general meeting while Section 26 provides for election and nomination of members of committees. Sub-section (2) of this section, as already mentioned, provides that Government where it is a share-holder, may nominate up to three members in the committee.

10. Chapter v. deals with privileges of co-operative societies with which we are not concerned. Chapter VI relates to properties and funds of co-operative societies while Chapter VII is for audit, inquiry, inspection and surcharge. Chapter VIII, relates to settlement of disputes and so far as possible, questions on which difference of opinion has arisen, are settled internally by domestic tribunals by the Registrar or his nominee. Chapter IX, provides for winding up of co-operative societies. Chapter X, for execution of awards, decrees, orders and decisions and Chapter XI, deals with appeals and revisions. Offences and penalties are dealt with under Chapter XII, which is the last in the Act, and it is a matter of surprise that the rule-making and rule-dispensing powers should find a mention under this head. An argument was sought to be raised that Section 77, which gives the dispensing power to the Government falling under this Chapter, does not strictly relate to offences and penalties. It has been suggested by Mr. Kuldip Singh that as Chapter XII, under which Section 77, falls, relates to offences and penalties, the dispensing power can be exercised only in respect of these. I do not think that this argument, though it is based on a faulty categorisation and description of Chapters can be stretched that far. While Section 77, deals with the dispensing power, Section 78, provides that the liquidator shall be a public servant. u/s 80, the provisions of the Companies Act are not to apply to co-operative societies. Section 81, provides a saving clause in respect of the societies which are already existing. Section 82, deals with the bar of jurisdiction of Courts, while Section 85, is the rule-making power of the State. It cannot acceptably be urged that the occurrence of Section 77, in Chapter XII, relating to "offences and penalties", objectionable though it may be, should lead us to the conclusion that the comprehensive and pervasive power granted to the Government is restricted to the subject-matter of "offences and penalties" alone.

11. Reference may also be made to the relevant provisions of the statutory rules which are Punjab Co-operative Societies Rules, 1963. Chapter IV, relates to general meetings and under Rule 22:

Without prejudice to the provisions of Section 24, the general meeting alone shall have the power to transact the following business:

(a) * * * *

(b) election, suspension and removal of the members of the committee other than the nominated members:

Provided that an interim vacancy of the committee may be filled by co-option by the remaining members of the committee till the election is held;

(c) expulsion of the members.

Under Rule 23:

The members of the committee of a co-operative society shall be elected in accordance with the rules given in Appendix C.

In Appendix "C, which relates to "rules of election to the committee", there is Rule 3, which says that:

The manager shall draw up a detailed programme of election in accordance with the instructions issued by the Registrar, from time to time,

and "manager" is the person who is appointed as such by the Registrar. The general meeting, under Rule 4, is to be presided over by the Chairman and voting has to be exercised by secret ballot. The candidates who secure a majority of votes "shall be declared elected by the Chairman". "Chairman" again is a person appointed by the Registrar to preside over a general meeting held for the purpose of election.

12. The argument of Mr. Kuldeep Singh is that the statutory provisions of the Act as well as the statutory rules, while recognising the validity of instructions issued by the Registrar provide in specified and clear terms that the election of the board of directors, which it is common ground is synonymous with the "members of the committee" envisaged in the Act and the Rules, has to be in a general meeting. The impugned instructions in consequence of the notification issued u/s 77, lay down a procedure for election which is foreign to the statutory provisions and indeed in contravention of them. Creation of zonal electorates, in submission of the counsel, cuts a new ground altogether for the basis of election and is in breach of the policy adumbrated in the Act and the Rules. It is not a mere matter of detail that the election of each director is to be made by the members of a particular zone. There can be no denial of the fact that election in the general meeting would result in only those members being successful who can command general consensus and consent of the entire area and not of any particular delegates or zones.

13. The argument of the State counsel is that Section 15, which has been inserted for the first time in the Act enforced in 1961, permitted the Government to be a member of the co-operative society, and this has led to the consequential

provisions for the over-all control and supervision exercised over the co-operative societies through the Registrar. Even Sections 23 and 24, have been introduced for the first time in the Act of 1961. Section 77, according to the learned Counsel, which existed in the previous Act also, merely empowers the Government to exempt any cooperative society in suitable cases from the provisions of the Act and does not result in investment in it of uncanalised, unguided and uncontrolled powers. The elective element, which is the keynote of Sections 23 and 24, is preserved by the impugned instructions which merely lay down a representative mode of election. It is suggested that the members of different zones may and indeed invariably have conflicting interests and these should not be submerged by the vote of the majority of members in the majority of zones. It is, of course, true that if a person is elected from a zone, he will invariably act in the interest of the members of that zone although this may run in conflict with that of the other zones.

14. It is common ground that if Section 77, is intra vires, the instructions will be valid and so also the consequences which flow from it, and Mr. Kuldip Singh, concedes that in that eventuality he will have no case to urge. The central point in the case, therefore, is whether Section 77, suffers from the vice of excessive delegation and is, therefore, to be struck down on that score?

15. The leading authority on the subject is the *In Re: The Delhi Laws Act, 1912*, the *Ajmer-Merwara (Extension of Laws) Act, 1947* and the *Part C States (Laws) Act, 1950*, , whose summary by Mr. Justice Vivian Bose is produced at page 573, in *Rajnarain Singh Vs. The Chairman, Patna Administration Committee, Patna and Another*, . A set of seven different situations and the decisions given on them by the Bench in the *In Re: The Delhi Laws Act, 1912*, the *Ajmer-Merwara (Extension of Laws) Act, 1947* and the *Part C States (Laws) Act, 1950*, , were set out. For our purposes only two of these situations are important, these being at Nos. 2 and 5.

(2) Where the executive authority was allowed to select and apply a Provincial Act in similar circumstances:

This was also upheld, but this time by a majority of five to two.

(5) Where the authorisation was to repeal laws already in force in the area and either substitute nothing in their places or substitute other laws, Central or Provincial, with or without modification:

This was held to be "ultra vires" by a majority of four to three.

16. The problem which was sent for resolution to the Supreme Court related to the application of laws of other States to the State of Delhi by the Delhi Laws Act. The attack was that the power vested in the executive authority to apply Central or Provincial laws to the State of Delhi amounted to excessive delegation and the relevant answers with which we are concerned were given in the manner set out above. According to Mr. Jain, the answer of the Supreme Court on the

second set is more pertinent for four purposes. With respect to the learned Counsel, we do not agree with him and in our opinion the State Government u/s 77, has been given the virtual power to repeal the provisions of the Act in respect of certain co-operative societies with or without substitution of other provisions and is ultra vires under item (5), aforesaid. Election by a general meeting of the committee has been substituted by election on zonal basis. As observed by Mr. Justice Bose in *Rajnarain Singh Vs. The Chairman, Patna Administration Committee, Patna and Another*, , the executive authority may be authorised to modify either existing or future laws but not in any essential feature. "Exactly what constitutes an essential feature cannot be enunciated in general terms, and there was some divergence of view about this in the former case, but this much is clear from the opinions set out above: it cannot include a change of policy." The Court, of course, is not concerned with the merit of the legislative policy but it will not enforce a provision of law which has the effect of delegating the legislative power to the executive to bring about a change in policy of the existing law. Mr. Kuldip Singh, contends, and in our view correctly, that the policy of election of directors in a general meeting which in the final analysis is a matter of policy, has been virtually changed by the introduction of zonal system under the cloak of delegated legislation. The sweep and amplitude of Section 77, in his submission, is manifest by what has been done in the present case.

17. The same principle has been enunciated by the Supreme Court in *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, . In that case, the validity of the Cotton Textiles (Control of Movement) Order, 1948, was upheld by the Supreme Court as the grant or refusal of a permit vested in the Textile Commissioner who was merely appointed to effectuate a policy which had been set out in the Act. The contention of the counsel seeking to strike down the provision on ground of excessive delegation was not accepted as the executive authority, in whom the power was vested, could not exercise uncontrolled and unguided powers.

18. The matter again came up for a detailed examination by the Supreme Court in the case of *Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, , in which the validity of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, was challenged, inter alia, on the ground that one of its provisions surrendered unguided and uncanalised powers to the executive to add to the diseases enumerated in Section 3. In speaking for the Court, Mr. Justice Kapur observed at page 567 that:

the legislature cannot delegate its powers to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes or intends to make its own action depend. There are many things upon which wise and useful legislation must depend which cannot be known to the law

making power, and, must therefore, be subject of enquiry and determination outside the hall of legislature. But the discretion should not be so wide that it is impossible to discern its limits * * * * Delegation should not be so indefinite as to amount to an abdication of the legislative function.

The Parliament in that case was held to have established no criteria or standard and had "not prescribed any principle on which a particular diseases or condition is to be specified in the Schedule. It is not stated what facts or circumstances are to be taken into consideration to include a particular condition or disease." The piece of legislation attacked was, therefore, declared ultra vires as it had conferred uncanalised and uncontrolled power to the executive. Mr. Kuldip Singh, argues that in the instant case, no guidance is to be discerned anywhere for the exercise of repealing power relating to the general policy for the election of board of directors, and I think that point has not been sufficiently answered on behalf of the State.

19. In another Supreme Court decision of Vasantlal Maganbhai Sanjanwala Vs. The State of Bombay and Others, , it was observed by Mr. Justice Gajendra-gadkar (later Chief Justice), thus:

In dealing with the challenge to the vires of any statute on the ground of excessive delegation it is necessary to enquire whether the impugned delegation involves the delegation of an essential legislative function or power and whether the Legislature has enunciated its policy and principle and given guidance to the delegate or not.

20. In Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union, , it was held by a majority that Section 37, of the Payment of Bonus Act, 1965, authorising the Central Government to provide by order for removal of doubts or difficulties in giving effect to the provisions of the Act had in effect delegated legislative power which is not permissible. Even a provision in Section 37, that the order must not be inconsistent with the purposes of the Act could not save the impugned legislation from the vice of delegation of legislative authority, the Government having been made the sole judge whether difficulty or doubt had arisen in giving effect to the provisions of the Act and whether it is necessary or expedient to remove the doubt or difficulty.

21. In the same year the Supreme Court in Devi Das Gopal Krishan v. State of Punjab AIR 1067 S.C. 1895, observed that:

the essential legislative function is the determination of the legislative policy and its formulation as a rule of conduct.

Obviously it cannot abdicate its functions in favour of another. But in view of the multifarious activities of a welfare State, it cannot presumably work out all the details to suit the varying aspects of a complex situation. It must necessarily delegate the working out of details to the executive or any other agency.

There may be situations where the Legislature may direct the executive to take a

certain line of action but only after some guidance is given in the principal legislation itself. Chief Justice Subba Rao further observed at page 1901 that:

self effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation. It is for a Court to hold on a fair, generous and liberal construction of an impugned statute whether the legislature exceeded such limits. But the said liberal construction should not be carried by the Courts to the extent of always trying to discover a dormant or latent legislative policy to sustain an arbitrary power conferred on executive authorities. It is the duty of the Court to strike down without any hesitation any arbitrary power conferred on the executive by the legislature.

It may be observed in parenthesis that this view of the Supreme Court affirmed the dissenting view adopted in *Vasantlal Maganbhai Sanjanwala Vs. The State of Bombay and Others*, .

22. The word "fair" not having been denned in the Punjab Cattle Fairs (Regulation) Act, 1968, a Bench of Gurdev Singh J., and myself in *Mohinder Singh Sawhney Vs. State of Punjab and Others*, , struck down the Act which provided for restriction on cattle fairs and everything depended on what a fair actually is, the State counsel having taken the position that any sale by a party other than the State or its nominee would constitute a "fair".

23. Mr. S. K. Jain for the State and Mr. Karampal Singh for Ved Parkash, Respondent No. 6, have tried to persuade us to reach conclusions in favour of the constitutionality of Section 77 of the Act relying on the same judgments of the Supreme Court and some others. In the submissions made by them, a matter of detail which the legislative may validly delegate to the executive is something separate and distinguishable from a legislative principle and what has been authorised is nothing more than this that the Registrar may frame instructions to bring about a better representation of the interests of the different cane-growers within the area of the. Society. The creation of zones leaves the elective principle intact. It has also been urged that Narula J., in *(Ajit Singh v. The Registrar, Cooperative Societies, Punjab C.W. 2116 of 1965* decided on 11th March, 1966, *(Kishan Singh v. State of Punjab C.W. 552 of 1965*, decided on 26th October, 1967, has upheld the zones which now form the essential part of the election programme which is sought to be challenged. Mr. Karampal Singh particularly wanted us to take note of the fact that persons have to be brought in the co-operative movement by persuasion and nothing should be done which is calculated to arrest or retard the growth of this movement. The Registrar, who under the Act is to promote the principles of the co-operative movement, has been provided with sufficient guide and the zones after all have been made not for the Society in particular but for co-operative societies in general. Thus, the point for determination turns on the question whether the mode of election chosen by the Registrar in his instructions is a mere matter of detail and the principles solemnly set out in the statute and the rules framed thereunder could be dispensed with by a fiat of the Executive Government acting through its

functionaries?

24. After a consideration of all the authorities we think that Section 77 of the Act constitutes excessive delegation and must be struck down. A reference may briefly be made to the authorities other than those cited by Mr. Kuldip Singh on behalf of the Petitioner. In *Corporation of Calcutta and Another Vs. Liberty Cinema*, it was held that where a license fee on a cinema house fixed in 1948 at Rs. 400 per year was increased to Rs. 6,000 in the year 1958 by changing the basis of assessment and fixing it at Rs. 5 per show, it did not constitute an arbitrary power of taxation conferred by Section 548 of the Calcutta Municipal Act, 1951, and did not suffer from the vice of delegated legislation. In the words of the Court:

No doubt a delegation of essential legislative power would be bad. But the fixation of the rates of taxes is not of the essence of legislative power of taxation" and may legitimately be left by statute to a non-legislative authority for there is no distinction in principle between delegation of power to fix rates of taxes to be charged on different classes of goods and power to fix rates simpliciter. This case, in our opinion, is clearly distinguishable.

25. In *Khambalia Municipality and Another Vs. State of Gujarat*, it was held that Section 9(1) of the Gujrat Panchayats Act, 1962, "is not unconstitutional for the reason that the policy of the Act, viz., that Panchayats should be established within a reasonable time in all local areas with populations not exceeding 30,000 and not included in a notified area or a cantonment, guides and controls the discretionary power of the State Government". The legislature may confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within its framework. It was further held that the inquiry and the framing of the proper rules with regard to the inquiry are subordinate or ancillary matters which could be properly left to an administrative agency. This case, again, is distinguishable on facts and the principle enunciated is the same as in other cases.

26. In *Ayodhya Prasad Vajpai Vs. State of U.P. and Another*, a power was given to the State Government to determine what the khands should be and how many Kshetra Samitis should be constituted in each district. The underlying policy and the objective of the legislation is clearly set out in the statute and the details of the duties of the Kshetra Samitis are indicated. It was held by the Supreme Court that the power given to the State Government is not an excessive delegation of the legislative functions.

27. Turning to the unreported judgments of Narula, J., the ratio decidendi in *Ajit Singh's case* C.W. 2116 of 1965 decided on 11th March, 1966 is pithily stated towards the close of the judgment in these words:

Elections under the Act and the State rules as well as under the Annexure C rules could be held tehsil-wise or according to geographical zones cut out of a tehsil but not according to seats fixed in the committee by some fiction.

This is not an authority for the proposition that persons chosen from zones should not be elected in a general meeting of the committee. The other judgment really does not touch the point in dispute and need not be adverted to.

28. In the result the petition must be allowed and the elections which have been held on basis of the election programme are accordingly quashed. This is in pursuance of our conclusion that Section 77 of the Punjab Co-operative Societies Act, 1961, suffers from the blemish of excessive delegation and is declared ultra vires. There would be no order as to costs of this petition.

R. S. NARULA, J.--I agree entirely.