
(1970) 10 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1204 of 1970

Watan Singh Giani

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 20-10-1970

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1973) 1 ILR (P&H) 281 : (1971) 73 PLR 828

Hon'ble Judges : H.R. Sodhi, J

Bench : Single Bench

Advocate : B.S. Khoji, for the Appellant; K.S. Keer, for A.G. and R.L. Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

H.R. Sodhi, J.—This writ petition arises out of an election dispute between the Petitioner and Respondent 5 both of whom were seeking election as a Director of the Hoshiarpur Central Co-operative Bank Limited, Hoshiarpur, hereinafter described as the Bank. Respondent 5 was a Director of the Bank earlier as well from 6th November, 1960 to 26th June, 1968, and again from 24th December, 1968, till 2nd December, 1969, when scrutiny of nomination papers for the present election which has led to the dispute took place. Elections to the Managing Committee of the Bank were held under the Punjab Co-operative Societies Act, 1961, referred to hereinafter as the Act, and the Petitioner and Respondent 5 filed their nomination papers. On an objection being taken by the Petitioner, Respondent 5 was held by the Returning Officer (Assistant Registrar, Cooperative Societies) to be ineligible to seek election on the ground that he had been a member of the Committee previously for six years and a period of three years since he last so served had not expired. The alleged disqualification was because of the Punjab Co-operative Societies (Amendment) Ordinance, 1969, Sub-section (2) of Section 26A of the Ordinance reads as under:

(2) No person shall be eligible for being elected to the Committee of any co-

operative society after he has served on the Committee of that Society, whether before or after or partly before and partly after the commencement of the Punjab Co-operative Societies (Amendment) Ordinance 1969, for a continuous period of 6 years, unless a period of not less than three years has expired since he last so served.

2. The Returning Officer took the view that Respondent 5 had continued as a Director for six years and that since there was not a gap of three years after the said Respondent last so served, the latter was disqualified from seeking election again.

3. Respondent 5 moved the Registrar for arbitration u/s 56(2) of the Act in order to have the dispute settled and the Joint Registrar, Co-operative Societies, Punjab, was appointed an arbitrator. The arbitrator set aside the order of the Returning Officer rejecting the nomination papers of Respondent 5 and also the elections which had by then taken place. Fresh elections were consequently directed to be held according to law.

4. The Petitioner filed an appeal against the order of the arbitrator before the Registrar, Co-operative Societies, but the same was dismissed on 20th April, 1970. Elections were again fixed for 30th April, 1970, and election programme issued afresh. It was open to the Petitioner to have filed a revision petition before the State Government u/s 69 of the Act, but instead of pursuing that remedy he moved this Court for the exercise of its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India to get the orders of the arbitrator and the Registrar quashed. He prayed for stay of election, but the admitting Bench declined that request. Had he chosen to prefer the revision petition, the State Government was competent, u/s 70, to pass an interlocutory order including an order of stay. In the meantime, elections were held and Respondent 5 was elected. The Petitioner then made an application (Civil Miscellaneous Application No. 4096 of 1970) for getting Respondent 5 restrained from acting as a Director of the Bank but this prayer was refused by Tuli J, on 25th August, 1970.

5. The Sole question that arises for consideration from the interpretation of the aforesaid Sub-section (2) of Section 26A of the Ordinance is whether the case of Respondent 5 was covered by the ineligibility stated therein. There is a preliminary objection as well about the maintainability of the writ petition, when the Petitioner did not pursue the alternative remedy by way of revision to the State Government as available to him under Sections 69 and 70 of the Act.

6. After hearing the learned Counsel for the parties, I am of the opinion that the writ petition is liable to be dismissed on both the grounds. Section 26 of the Act provides for election and nomination of members of the committee of a Co-operative Society and it was amended by the Punjab Co-operative Societies (Amendment) Ordinance, 1969 (Punjab Ordinance No. 10 of 1969), followed by the Punjab Co-operative Societies (Amendment) Act, 1969 (Punjab Act No. 26 of

1969), whereby Section 26A, including the aforesaid Sub-section (2) was inserted for the first time. The Ordinance was promulgated on the 8th September, 1969, and published in the Punjab Government Gazette (Extraordinary), dated 10th September, 1969. This new provision laid down restrictions on membership of a Committee and seems to have been introduced to discourage creation of vested interests in the matter of management of the Co-operative Societies and for that purpose a person, who had already served on the committee of a Co-operative Society for a continuous period of six years could not seek election again unless a period of not less than 3 years had expired since he last so served on the committee. A plain and natural reading of Sub-section (2), the words of which are clear and unambiguous, leaves no room for doubt that a period of six years and the gap of three years must be continuous. A statute will normally be interpreted as taking effect prospectively, but the Ordinance, in the instant case, in reckoning the period of six years took into account the period for which a person had acted as a member of the committee when the Ordinance came into force so that he could continue for a total length of six years after which a gap of three years would become necessary before he could seek re-election. This interpretation follows from the use of the words "whether before or after or partly before or partly after" which in fact furnish a key and a guide to the object of this provision. The disqualification was not intended to be imposed on a person, who had ever before the promulgation of the Ordinance continued as a member for six years followed by discontinuity in membership, but was a member again at the time of the coming into force of the Ordinance. Any such interpretation, as urged by the learned Counsel for the Petitioner, would defeat the very purpose of the Act and work hardship which could not be intended. The use of the words "last so served" is also not without significance and is again a pointer to the conclusion that that the period of three years for which a person cannot seek election will commence on the expiry of the period of continuous membership for six years.

7. There is, therefore, no merit in the writ petition and the Arbitrator rightly held that the Respondent was eligible to seek re-election.

8. The writ petition merits dismissal on another ground as well that the Petitioner did not pursue an alternative legal remedy which could be quite efficacious and was available to him. A power of revision has been given to the State Government and the Registrar to suo motu or on the application of a party to a reference, call for and examine the records of any proceedings in which no appeal lies to the Government or the Registrar as the case may be. These two authorities could pass any order as they thought fit and it is conceded before me that the case was covered by Section 69. The only reason -given is that the existence of an alternative remedy is not an absolute bar to the exercise of extraordinary jurisdiction by this Court under Articles 226 and 227 of the Constitution of India. I quite agree that in an appropriate case this Court may interfere in spite of an alternative remedy being uavailable, but the present is not that case. The Petitioner could have, in my opinion, gone to the revisional

authority first before coming to this Court. It is not a case where there was any inherent lack of jurisdiction and the issue involved was one within the jurisdiction of the authorities concerned, no matter that, according to the Petitioner, their decision was erroneous and depended on an interpretation of a provision in a statute.

9. In the result, the writ petition fails, but in the peculiar circumstances of the case, the parties are left to bear their own costs.