

Amrik Singh and another Vs State of Punjab and others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 2, 2000

Acts Referred: Punjab Co-operative Societies Act, 1961 â€” Section 27

Hon'ble Judges: V.S. Aggarwal, J; A.S. Gill, J

Bench: Division Bench

Advocate: Jagdeep Bains, for the Appellant; Sarwan Singh for Avtar Singh and Mr. Balwinder Singh, for the Respondent Nos. 6 and 7, for the Respondent

Final Decision: Allowed

Judgement

A.S. Gill, J.

The question of law formulated in this writ petition is, whether the Administrator appointed u/s 27 of the Punjab Co-operative

Societies Act, 1961 (for short "the Act") can enrol fresh members of the Society for the purpose of fresh election to its committee of management.

2. The existing committee of management of the Nial Transport Cooperative Society Ltd. Patran, Tehsil Samana, District Patiala (in brief "the

Society") forwarded an election programme to the Assistant Registrar Cooperative Societies, Samana. The programme was neither approved nor

rejected whereas on 9.10.1998, one Sukhdev Singh was appointed as Administrator of the Society u/s 27 of the Act. Sukhdev Singh

Administrator was thereafter replaced on 26.11.1998 and Inderjit Singh, Inspector Punjab Agriculture Development Board became Administrator

of the Society. The maximum tenure of an Administrator being six months was coming to an end on 4.4.1999, therefore, one Sadhu Singh

Inspector Cooperative Societies Bajumajra was appointed as Returning officer for the election and earlier to which the Administrator had enrolled

27 new members. The election was slated to be held on the basis of 44 members i.e. 17 previous members and new 27 members enrolled by the

Administrator. The enrolment of new members of the committee of management of the Society is to be approved by the general body of the Society

as per bye-law 7 of the Registered Bye-laws of the Society Bye-law 7 ibid, for facility of reference is reproduced as under:

Application for admission as members shall disposed of by the managing committee subject to the approval of General Body. - If the managing

committee or the General Body refuses to admit a person, it shall record its reasons for such refusal and communicate them to the person

concerned. Any person, who had been refused admission, shall have the right of an appeal to the Registrar within one month or the date of

communication of refusal. The decision of the Registrar on such appeal shall be binding on the society and the Appellant.

3. The Petitioners approached the Registrar, Cooperative Societies complaining that the Administrator could not have enrolled fresh members.

However, ignoring the objections of the Petitioners, the election of the committee of management was fixed for 27.4.1999. This action of the

Respondent-authorities has been challenged by the Petitioners by means of present writ petition, primarily on the grounds of limited powers of the

Administrator of the Society during the tenure as such and the absence of his jurisdiction to enrol new members.

4. Twenty-seven members were impleaded as Respondents in this writ petition on their request and they have filed written statement. These

Respondents supported the action of the Administrator of inducting them as fresh members.

5. No separate written statement has been filed on behalf of the Administrator.

6. We have heard counsel for the parties. The appointment of Administrator of the Society is envisaged u/s 27 of the Act. The appointment of

Administrator, as per the provisions of this section, can be made, when the Registrar of the Cooperative Society is of the opinion that any member

of the committee is defaulter or is negligent in performing his duties imposed on him by the Act or the Rules or the Bye-laws or commits, any act

which is prejudicial to the interest of the Society or its members. Sub-section (3) of Section 27 of the Act, which elucidates the powers or the

functions of the Administrator so appointed, provides as under:

(3) The Administrator so appointed shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have

powers to perform all or any of the functions of the committee or of any Officer of the society and take all such actions as may be required in the

interest of the Society.

7. A perusal of Sub-section (3) of Section 27 ibid would imply by implication that the Administrator so appointed is for the basic purpose of

running the day to day affairs of the Society during the absence of the committee of management and he has to remain under the control of the

Registrar. He has the powers to perform all or any of the functions of the committee, or in the absence of the Society, as per such instructions as he

may obtain from the Registrar. Admittedly, in this case, the election of new committee of management was necessitated and for which purpose the

Assistant Registrar Co-operative Societies was approached by the committee of the Society for holding election. But instead of proceeding to hold

fresh election to the committee of management, the Registrar has appointed the Administrator whose tenure was only for six months under the Act.

The Administrator inducted 27 new members immediately earlier to finalising the election programme for 27.4.1999. As per Bye-law 7 of the

Registered Bye-laws of the Society already reproduced above, the enrolment of every new member has to have the approval of the general body

and even if the Administrator in this case proceeded to enrol Respondents 9 to 35 as new members, they cannot be treated as such before the

election unless their enrolment was duly approved by the general body of the Society as per its Bye-law 7. It is not shown on the record if the

Registrar had issued any instructions to the Administrator to enrol new members of the Society. It is only stated that these Respondents were

enrolled as new members and they have moved an application and the Deputy Registrar of the Society forwarded their application to the

Administrator but without any direction or instructions. The Administrator could not have taken upon him to accept the application and enrol

Respondents 9 to 35 as new members without any instructions in that respect from the Registrar as required under Sub-section (3) of Section 27

of the Act, moreso, in view of the specific Bye-law 7 in respect of enrolment of members. Be that as it may, the question of power of the

Administrator to enrol new/fresh members of the Society in the absence of committee of management came up for consideration in a similar case

before the Supreme Court in K. Shantharaj and another Vs. M.L. Nagaraja and others, . The case before the Apex Court pertained to Section 30

of the Karnataka Co-operative Societies Act, 1959 which is almost identical to Section 27 of the Punjab Co-operative Societies Act, 1961 and

Sub-section (2) of Section 30 of the former Act is para materia to Sub-section (3) of Section 27 of the latter Act. For facility of reference, Sub-

section (2) of Section 30 of the Karnataka Co-operative Societies Act, 1959 is reproduced as under:

(2) The Administrator so appointed shall subject to the control of the Registrar and such instructions as he may give from time to time, exercise all

or any of the functions of the committee or of any officer of the co-operative society and take such action as he may consider necessary in the

interest of the society.

The Karnataka High Court while considering the ambit of Sub-section (2) of Section 30 of the Karnataka Co-operative Societies Act, 1959 held:

The new members enrolled by the Administrator is without authority of law and in utter disregard to the Bye-laws of the Society and they have no

right to participate in the election.

After considering the question aforesaid, the Apex Court held as under:

It would be clear from the language of these provisions that the Administrator or Special Officer, subject to control of any of the functions of the

society, and in the interest of the Society take such action as is necessary for proper functioning of the society as per law. He should conduct

elections as is enjoined thereunder. In other words, he is to conduct election with the members as on the rolls and by necessary implication he is

not vested with power to enrol new members of the Society.

8. There is thus, no escape from the conclusion that the action of the Administrator of inducing Respondents 9 to 35 as new members of the

Society was beyond his jurisdiction and as such they cannot be treated/considered as members of the Society for the purpose of election of the

committee of management.

9. For what has been discussed above, this writ petition is allowed. The election to the Society i.e. The Nial Transport Cooperative Society Ltd.

Patran, Tehsil Samana, District Patiala shall be conducted with the 17 members as on the rolls. The Registrar, Cooperative Societies Punjab shall

now proceed to hold the election in accordance with law without any further delay.

Sd/- V.S. Aggarwal, J.