
(2000) 11 P&H CK 0089

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 5381 of 1999

Amrik Singh and another

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision: Nov. 2, 2000

Acts Referred:

- Punjab Co-operative Societies Act, 1961 - 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 be 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, more so, 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 inducting 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.